Oral Argument
Conditionally Requested

No. 05-09-00557-CV

COURT OF APPEALS
for the
FIFTH DISTRICT OF TEXAS
Dallas, Texas

Amanda Ward,

Appellant,

v.

ACS State and Local Solutions, Inc. d/b/a LDC Collection Systems,

Appellee.

Appeal from the 192nd Judicial District Court
of Dallas County, Texas
Honorable Craig Smith, Presiding Judge

BRIEF FOR APPELLEE

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STATEMENT REGARDING ORAL ARGUMENT

In granting summary judgment against Appellant, the court below joined two federal district courts in holding that a person who is ticketed for running a red light has no legal claim against the provider of the red light camera that photographed the violation. Because the record in this case is relatively short, the material facts are not disputed, and the law is well settled as to the infirmity of Appellant's claims, oral argument is not likely to aid the Court's decisional process and should not be granted. Nonetheless, if the Court grants oral argument to Appellant, Appellee requests the opportunity to also present oral argument.

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), the following is a complete list of all parties to the trial court's judgment and the names and addresses of all trial counsel and appellate counsel:

1. Appellant (Plaintiff in the trial court):

   Amanda Ward ("Ward")

2. Appellee (Defendant in the trial court):

   ACS State and Local Solutions, Inc. d/b/a LDC Collection Systems ("ACS")

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[*] Before these firms were substituted as trial counsel, H. Ron White, Tracey R. Wallace, and Jamie Seaberry of the law firm of Adorno Yoss White & Wiggins, L.L.P. were attorneys of record for Appellee in the trial court. (4 CR 576)

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STATEMENT OF THE CASE

Nature of the case:	Ward brought various tort claims against ACS for (1) providing the City of Dallas with a red light camera system that photographed her vehicle running a red light and (2) allegedly reporting her unpaid red light citation to credit agencies. (1 CR 8-12)
Course of Proceedings:	ACS moved for summary judgment on Ward's claims under the Texas Deceptive Trade Practices Act ("DTPA") and the Texas Debt Collection Act ("TDCA"). (1 CR 13-20) Later, after the case was removed to federal court and then remanded upon the dismissal of a federal claim (1 CR 54-60), ACS moved for a traditional and no-evidence summary judgment on Ward's claims of negligence per se based on alleged violations of the Texas Occupations Code and the Texas Transportation Code (4 CR 588-775).
Trial Court's Disposition:	On January 30, 2008, the trial court (the Honorable Craig Smith) granted summary judgment in favor of ACS as to Ward's DTPA and TDCA claims. (1 CR 45 [App. tab 1]) On April 8, 2009, the trial court granted summary judgment in favor of ACS as to Ward's remaining claims of negligence per se under the Texas Occupations Code and the Texas Transportation Code. (4 CR 880-81 [App. tab 2])

ISSUES PRESENTED

1. Did the trial court correctly grant summary judgment as to Ward's claim of negligence per se based on chapter 1702 of the Texas Occupations Code because (a) there is no evidence that ACS's failure to obtain a private investigator's license (even assuming one was required) was a proximate cause of Ward's injury and damages, and (b) the licensing requirement of the Texas Occupations Code does not give rise to any common-law tort duty owed by ACS to red light traffic violators like Ward?

2. Did the trial court correctly grant summary judgment as to Ward's claims relating to ACS's alleged reporting of her unpaid red light citation to credit agencies? Specifically:

(a) Does Ward's claim of negligence per se based on section 707.003 of the Texas Transportation Code fail because (i) the contract between ACS and the City of Dallas to install red light cameras was executed before the effective date of section 707.003 and thus is expressly excluded from the scope of that provision, and (ii) the notice of violation that ACS sent to Ward was not imposed under chapter 707 of the Texas Transportation Code?

(b) Does Ward's claim under the Texas Debt Collection Act fail because (i) Ward was not a "consumer," and (ii) the money Ward owed for her red light violation was not a "consumer debt"?

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Ward's "Statement of Facts" is confusing, argumentative, largely unsupported by citations to the record, and ultimately unhelpful. (*See* Br. at 2-10) The following will attempt to clarify what Ward's "Statement of Facts" does not.

ACS is a corporation that provides photographic traffic signal enforcement systems -- specifically, red light cameras and related software -- to municipalities. (2 CR 199, 201, 254-55, 272-274; 3 CR 453, 455, 506-07, 508-09, 526-28; 4 CR 701, 704, 773-75) On October 31, 2006, ACS entered into a Turnkey System Outsourcing Agreement with the City of Dallas. (2 CR 199-251; 3 CR 453-505; 4 CR 701-54, 773-75) As required by the contract, ACS installed, maintained, and supported a red light enforcement system in Dallas consisting of 60 red light cameras. (2 CR 199, 201, 215, 253, 255; 3 CR 453, 455, 469, 507, 509; 4 CR 702, 704, 718, 773-75)

The City of Dallas uses the system provided by ACS to capture photographic images at designated intersections with traffic lights. (2 CR 253, 255; 3 CR 507, 509) City personnel review the data collected by the red light camera system and determine whether to issue a Notice of Violation for a red light violation. (2 CR 219, 253, 255; 3 CR 473, 507, 509; 4 CR 722) ACS's employees do not have any authority to determine whether to issue a Notice of Violation. (2 CR 253, 255; 3 CR 507, 509) Instead, they are authorized to print and mail Notices of Violation on behalf of the City of Dallas, but only after a duly authorized enforcement officer of the City of Dallas has reviewed and approved the citations. (2 CR 219, 253, 255; 3 CR 473, 507, 509; 4 CR 722) The City of

Dallas approves the content and format of all correspondence that ACS sends to vehicle owners. (2 CR 220, 255; 3 CR 474, 509; 4 CR 723)

On April 19, 2007, one of the red light cameras installed by ACS photographed Ward's vehicle driving through an intersection while the traffic light was red. (2 CR 257 [App. tab 3]; 3 CR 511; 4 CR 832) Approximately two weeks later, Ward received a Notice of Violation from the City of Dallas, advising her that she could either contest the citation or pay the civil fine of $75 on or before May 15, 2007, and warning her that a "[f]ailure to pay the civil fine or to contest liability . . . is an admission of liability" and that she "may be subject to formal collection procedures including, but not limited to, being reported to a credit reporting agency." (2 CR 257; 3 CR 511; 4 CR 830, 832) Ward did not contest the citation or pay the fine by May 15, 2007. (4 CR 831, 835) As a result, a late fee of $25 was added to the fine. (2 CR 257; 3 CR 511; 4 CR 832)

Although Ward was repeatedly notified of her delinquent fine, she disregarded those notices. On or about June 28, 2007, ACS sent Ward a notification arising from "unpaid amounts due on the red light citation[] and penalt[y] issued to [her] on a vehicle registered in her name" (4 CR 833), and advised her that she could "dispute the validity of this obligation" by "notify[ing] [ACS] in writing . . . within 30 days of receipt of this notice." (4 CR 833; *see also* 2 CR 221, 255; 3 CR 475, 509; 4 CR 724, 774) Ward once again chose not to pay the fine or dispute its validity. (4 CR 831, 835) Instead, she filed this lawsuit against ACS on August 24, 2007, alleging that ACS had violated the Fair Credit Reporting Act ("FCRA") and the Texas Deceptive Trade Practices and Consumer Protection Act ("DTPA") by notifying her of its intent to report her delinquent account to

a credit bureau. (1 CR 8-12) Recognizing that she did not have a viable claim under the FCRA because that statute had been repealed, Ward filed a supplemental petition asserting claims against ACS under the Texas Debt Collection Act ("TDCA"). (1 CR 14, 55) More than 16 months after filing her lawsuit and 20 months after receiving the original Notice of Violation, Ward finally paid the $100 fine. (4 CR 831, 835)

From the moment Ward's lawsuit was filed, it became a case in search of a legal theory. Nearly every time ACS moved for summary judgment on Ward's existing claims, Ward would supplement her petition to add a new cause of action. (*See* 1 CR 50-51, 55; 2 CR 139-40; 3 CR 404-05; *see also* 1 RR 63-67) For example, on January 30, 2008, the trial court initially dismissed Ward's DTPA and TDCA claims. (1 CR 45 [App. tab 1]) Ward then supplemented her petition to assert a federal claim under the Federal Debt Collection Practices Act, and ACS removed the case to the United States District Court for the Northern District of Texas. (1 CR 50-53, 55) The federal district court dismissed the Federal Debt Collection Practices Act claim, but because Ward in the meantime had tried to amend her complaint to assert claims for negligence, gross negligence, and negligence per se based upon purported violations of the Texas Occupations Code and the TDCA, the court remanded the case to state court. (1 CR 54-60)

After remand, the trial court granted summary judgment on the negligence per se, negligence, and gross negligence claims, as well as on Ward's newly asserted claim of

negligence per se for alleged violations of the Texas Transportation Code. (4 CR 880-81 [App. tab 2])[1] Ward now appeals from the summary judgment orders dismissing her TDCA claim and her negligence per se claims based upon alleged violations of the Texas Occupations Code and the Texas Transportation Code. (Br. at 2) Ward does not appeal the summary judgment orders dismissing her DTPA, negligence, gross negligence, and attorney's fee claims. (*Id.*)

SUMMARY OF THE ARGUMENT

Ward does not dispute that a vehicle of which she is the registered owner was captured on camera running a red light at a Dallas intersection in April 2007. She also does not dispute that she failed to take advantage of the established procedures for contesting the red light citation before a Dallas City hearing officer or appealing to a municipal court judge. And ultimately, she paid in full the $75 civil fine and $25 late

[1] Before granting final summary judgment, the trial court also granted an interlocutory partial summary judgment in favor of Ward that ACS failed to obtain the appropriate license and bond under the Texas Occupations Code. (1 CR 95-96) Although ACS continued to assert that this interlocutory ruling was erroneous, it ultimately became moot when the trial court granted summary judgment based on the grounds raised in ACS's motions for summary judgment. (4 CR 880-81) Nonetheless, buoyed by the trial court's partial summary judgment regarding the licensing requirement, Ward's attorney (her husband) filed three putative class actions in federal court against ACS and other companies that provide photographic traffic signal enforcement systems. The federal district courts promptly dismissed each of those actions on various grounds. *See Bell v. Redflex Traffic Sys., Inc.*, No. 4:08-CV-444 (E.D. Tex. Mar. 25, 2009) (Schneider, J.) [App. tab 4] (granting motion to dismiss plaintiffs' claim of negligence per se because of lack of standing); *Bell v. American Traffic Solutions, Inc.*, 633 F. Supp. 2d 305, 317 (N.D. Tex. 2009) (Fish, J.) [App. tab 5] (granting motion to dismiss plaintiffs' claim of negligence per se based on section 1702.101 of the Texas Occupations Code); *Verrando v. ACS State and Local Solutions, Inc.*, No. 3:08-CV-2241-G, 2009 WL 2958370, at *6 (N.D. Tex. Sept. 15, 2009) (Fish, J.) [App. tab 6] (granting motion to dismiss plaintiffs' claims of negligence per se based on section 1702.101 of the Texas Occupations Code and section 707.001 of the Texas Transportation Code).

penalty. Despite Ward's own responsibility for the citation and fine, she is now trying to shift the blame to ACS by asserting that ACS had no right to either install the red light camera that photographed her violation or take steps to collect the civil fine that she admitted owing. Like the federal district courts that have dismissed similar lawsuits filed by Ward's counsel, the court below was correct in granting summary judgment as to the three claims that Ward urges in this appeal:

Texas Occupations Code: Even if Ward could show that ACS was required to obtain a private investigator's license under chapter 1702 of the Texas Occupations Code, the trial court correctly rejected her claim of negligence per se based on that alleged violation. First, as the court held, Ward offered no evidence that ACS's failure to obtain a private investigator's license was a proximate cause of her alleged injury and damages. To the contrary, her uncontested violation of the traffic laws was the sole cause, and the non-existence -- or the existence -- of a license was irrelevant to the operation of the red light camera or the imposition of a civil fine. Second, and in any event, Ward failed to show that the Texas Legislature intended for individuals to redress alleged violations of chapter 1702's licensing requirements through the imposition of a common-law tort duty upon entities like ACS. For this reason as well, a negligence per se claim will not lie for alleged violations of chapter 1702.

Texas Transportation Code: The trial court was also correct in rejecting Ward's claim that ACS was negligent per se under section 707.003 of the Texas Transportation Code by allegedly providing information about her civil penalty to a credit bureau. To begin with, the October 2006 contract between ACS and the City of Dallas is expressly

excluded from section 707.003, which applies only to contracts entered into after the September 1, 2007 effective date of the act. Moreover, section 707.003 applies only to a civil penalty "imposed under" chapter 707. Ward's civil penalty, however, was not "imposed under" chapter 707 because the violation and assessment of her civil fine occurred in April 2007, months before chapter 707 became effective.

Texas Debt Collection Act: Ward expressly represented to the trial court that she had "abandoned" her claim under the Texas Finance Code, which includes the Texas Debt Collection Act. (3 CR 312) For that reason alone, the summary judgment as to Ward's TDCA claim should be affirmed. In any event, Ward cannot establish the threshold elements of a TDCA claim because she is not a "consumer" of any services and the money she owed for her red light violation does not constitute a "consumer debt."

For any or all of these reasons, the trial court's summary judgment in favor of ACS should be affirmed in its entirety.

ARGUMENT

I. The Trial Court Correctly Granted Summary Judgment on Ward's Claim of Negligence Per Se Based on Chapter 1702 of the Texas Occupations Code.

In her fourth supplemental petition, Ward alleged that ACS was "negligent per se" because it provided red light cameras to the City of Dallas without first obtaining a license as an "investigations company" in accordance with chapter 1702 of the Texas

Occupations Code. (4 CR 591)[2] Although the trial court erred in determining that ACS was required to obtain a private investigator's license in order to perform its duties under the contract with the City of Dallas (1 CR 95-96), this Court need not resolve that issue because the trial court was ultimately correct in granting summary judgment on Ward's claim of negligence per se under the Texas Occupations Code (4 CR 880-81). First, as the court correctly held, Ward offered no evidence that ACS's failure to obtain a private investigator's license was a proximate cause of Ward's alleged injury and damages in connection with the red light violation. Second, although the court did not specifically address ACS's alternative summary judgment argument that chapter 1702 of the Texas Occupations Code does not give rise to any tort duty, the summary judgment can be affirmed on that ground as well.

A. There Is No Evidence that ACS's Failure to Obtain a Private Investigator's License Was a Proximate Cause of Ward's Alleged Injury and Damages; to the Contrary, Her Uncontested Violation of the Traffic Laws Was the Sole Cause.

Even when the violation of a statute constitutes negligence per se -- which it does not in this case for the reasons discussed in the next section -- "Texas courts still *require* the plaintiff to show the violation of the statute is the cause in fact of the injuries, and that the injuries were foreseeable" from the act of violating the statute. *Hudson v. Winn*, 859

[2] Chapter 1702 is also known as the Private Security Act (or the PSA). *See* TEX. OCC. CODE § 1702.001. Sections 1702.101 and 1702.104 require that any person who acts as an "investigations company" -- *i.e.*, one who "engages in the business of securing . . . evidence for use before a court, board, officer, or investigating committee" -- must obtain an investigations company license. *Id.* §§ 1702.101, 1702.104 [App. tab 7].

S.W.2d 504, 508 (Tex. App.--Houston [14th Dist.] 1993, writ denied) (emphasis in original). These components of proximate cause -- cause in fact and foreseeability -- cannot be established by mere conjecture, guess, or speculation, and their absence may be determined as a matter of law. *See, e.g.*, *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 477 (Tex. 1995). Cause in fact requires proof that the alleged violation was (1) a substantial factor in bringing about the harm at issue, and (2) one without which the harm would not have occurred. *Id.* There is no cause in fact if the alleged violation did no more than furnish a condition that made the injury possible. *Id.* Based on these settled principles, the court below correctly held that the failure of ACS to acquire a private investigator's license was not a proximate cause of any injury or damages to Ward.

The requirement (and the insurmountable difficulty) of establishing a direct causal link between the failure to acquire a private investigator's license and an alleged injury was illustrated in *Hudson v. Winn*. There, a real estate broker sued a private investigator and his employer for various torts arising out of her encounter with the investigator in her condominium. Among other claims, the plaintiff asserted a claim for negligence per se based on the investigator's failure to obtain a license under the former version of chapter 1702. *Hudson*, 859 S.W.2d at 508. The trial court granted a directed verdict against the plaintiff on all her claims, and the court of appeals affirmed. As to the negligence per se claim, the court held that the evidence supported the trial court's finding "that the failure

of [the investigator and his employer] to acquire a private investigator's license was not a proximate cause of any damages or injuries to [the plaintiff]." *Id.*[3]

To an even greater extent than the plaintiff in *Hudson*, Ward offered no evidence in this case that ACS's failure to acquire a private investigator's license was a proximate cause of her claimed injury (the issuance of a red light citation) and her alleged damages (the payment of the civil fine and attorney's fees, and the consequences of the credit reporting). At the very most, Ward alleges that no citation would have been issued but for the operation of the red light camera that ACS installed at the intersection in question. (Br. at 17) That may be a truism, but the relevant question for purposes of proximate cause is whether the operation of the red light camera was related in any way to the non-existence -- or the existence -- of a private investigator's license. Because there is no evidence that it was, the court correctly granted summary judgment based on the absence of proximate cause. *See also Verrando v. ACS State and Local Solutions, Inc.*, No. 3:08-CV-2241-G, 2009 WL 2958370, at *4 (N.D. Tex. Sept. 15, 2009) (Fish, J.) ("There are no facts in the plaintiffs' complaint to support the idea that ACS's failure to acquire an investigation license was the cause-in-fact of the injury of receiving the civil fines. Even if the court assumes *arguendo* that ACS had possessed the license that is allegedly

[3] The defendants in *Hudson* did not argue, and the *Hudson* court did not have to decide, whether the licensing statute at issue established a standard of civil liability from which a negligence per se cause of action can arise. ACS, by contrast, raised that issue in the court below, and as discussed in the next section, it serves as an alternative basis for affirming the summary judgment against Ward's negligence per se claim.

required, there would still be no change in the outcome of the civil fines paid by the plaintiffs.").

In the court below, ACS posited several hypotheticals under which Ward conceivably could show that ACS's failure to acquire a private investigator's license might be a proximate cause of her alleged injury and damages (4 CR 597-98) -- but Ward still could not adduce any evidence of such a causal link (4 CR 810-14). For example, ACS suggested that proximate cause might exist if its failure to acquire a license resulted in a malfunctioning red light camera or an incompetent or dishonest technician, thereby causing false or inaccurate data to be provided to the City of Dallas relating to Ward's vehicle at the time and place of the violation. (4 CR 597) Ward, however, could not and did not offer any such evidence. Indeed, she has never disputed that her vehicle in fact ran a red light on the date and at the intersection identified in the citation.

Similarly, ACS suggested that Ward arguably could raise a fact issue on proximate cause by showing that its failure to acquire a license meant there never would have been a red light camera to catch her in the first place -- either because the Texas Department of Public Safety would have prohibited an unlicensed company from providing red light cameras, or the City of Dallas would not have contracted with ACS at the outset, or the City later would have cancelled its contract with ACS. (4 CR 597) Ward, however, offered no evidence -- from the DPS, the City of Dallas, ACS, or anyone else -- that ACS's lack of an investigator's license had any effect whatsoever on its right or ability to obtain the contract, install the red light camera system, or transmit data to the City. Indeed, Ward made no showing that ACS would have been unable to obtain an

investigator's license, even if one were required, between the date of ACS's contract with the City in October 2006 and the date of Ward's red light violation in April 2007.

Positing yet another hypothetical scenario that arguably could establish causation, ACS also suggested in its summary judgment motion that Ward could try to show that its failure to acquire a license would have rendered any photographic image inadmissible, thus preventing (or requiring the dismissal of) her red light citation. (4 CR 598) Ward, however, offered no proof that ACS's failure to obtain a license either would, could, or did have any such exclusionary effect on the admissibility of the red light camera evidence. Moreover, the law is well settled that even if evidence has been illegally or wrongfully obtained, it is still admissible in a civil proceeding (such as an administrative appeal of a red light citation). *See, e.g.*, *State v. Taylor*, 721 S.W.2d 541, 551 (Tex. App. --Tyler 1986, writ ref'd n.r.e.) (appraisal conducted by unlicensed real estate broker was admissible in condemnation case under rule that "[e]vidence illegally obtained is admissible in civil cases"); *Allison v. Am. Sur. Co.*, 248 S.W. 829, 832 (Tex. Civ. App.-- Galveston 1923, no writ) (evidence that is otherwise admissible may not not be excluded in a civil suit on the ground that it has been illegally or wrongfully obtained).[4]

[4] Although Ward has acknowledged the "general rule" that illegally-obtained evidence is admissible in a civil proceeding (Br. at 17), she relies on *Collins v. Collins*, 904 S.W.2d 792, 799 (Tex. App.--Houston [1st Dist.] 1995, writ denied), for the proposition that a court nonetheless may exclude such evidence "so as not to make the court a partner to the illegal conduct." (Br. at 18) *Collins*, however, is inapposite because it involved the admissibility in a divorce case of tape-recorded conversations obtained in violation of federal and state wiretap statutes, which expressly criminalize and prohibit the use and dissemination of such communications. 904 S.W.2d at 799. No such statutes are implicated in this case. *See Bell v. Redflex Traffic Sys., Inc.*,

(Continued . . .)

Ultimately, the sole cause of Ward's alleged injury and damages is simply the fact that her vehicle illegally ran a red light. Ward has never disputed that fact, and although she has denied being the driver of the vehicle, she has admitted liability by failing to contest the citation and by subsequently paying the civil fine on December 1, 2008. (4 CR 831, 835) *See* Code of Ordinances of the City of Dallas, Article XIX, §§ 28-207(c), 28-210(a)(1), 28-213(a) [4 CR 641-51]. These circumstances are materially identical to those in *Peeler v. Hughes & Luce*, 909 S.W.2d 494 (Tex. 1995), where the Texas Supreme Court held that the plaintiff's own conduct (the commission of a criminal offense) was the sole cause of her indictment and conviction, and thus barred her from suing her attorney for failing to tell her about an alleged offer of absolute immunity. *Id.* at 495. The Court reasoned that:

> As a matter of law, it is the illegal conduct rather than the negligence of a convict's counsel that is the cause in fact of any injury flowing from the conviction, unless the conviction has been overturned.

Id. at 498.

Peeler's reasoning fully applied here. As a matter of law, it was the uncontested act of running a red light -- not the failure of ACS to obtain a private investigator's license -- that was the cause in fact of any injury or damages to Ward flowing from the issuance of a red light citation. For this reason, the trial court correctly granted ACS's no-evidence and traditional motion for summary judgment on the element of proximate

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(Continued . . .)
No. 4:08-CV-444, at pp. 7-8 (E.D. Tex. Mar. 25, 2009) (Schneider, J.) (distinguishing wiretap statute at issue in *Collins* from licensing statute at issue here).

cause, and the dismissal of Ward's negligence per se claim under chapter 1702 of the Texas Occupations Code should be affirmed.

B. The Licensing Requirement of the Texas Occupations Code Does Not Give Rise to Any Tort Duty Owed by ACS to Red Light Violators Like Ward.

Although the trial court's dismissal of Ward's chapter 1702 negligence per se claim was based solely on the absence of proximate cause and damages, the court also would have been correct in granting summary judgment based on ACS's alternative argument that chapter 1702 does not establish a standard of civil liability from which a negligence per se cause of action can arise. (4 CR 591-96) As the Texas Supreme Court held in *Perry v. S.N.*, 973 S.W.2d 301 (Tex. 1998), "[t]he threshold questions in every negligence per se case are whether the plaintiff belongs to the class that the statute was intended to protect and whether the plaintiff's injury is of a type that the statute was designed to prevent." *Id*. at 305. Here, even assuming that Ward belonged to the class of persons that chapter 1702 was intended to protect, she cannot show that her alleged injury (receiving a red light traffic citation and paying a fine) is of a type that the statute was designed to protect. Nothing in chapter 1702 suggests -- and Ward offered no evidence to prove -- that an unlicensed entity in the position of ACS would have been prohibited by either the Texas DPS, the City of Dallas, or anyone else from taking any of the actions that led to the issuance of a red light citation to Ward. Because Ward's alleged injury from that citation is demonstrably *not* "of a type that the statute was designed to prevent," she cannot as a matter of law base a per se negligence claim upon the asserted violation of sections 1702.101 and 1702.104.

Moreover, the Texas Supreme Court has made clear that these "threshold questions" still "do [ ] not end our inquiry" because a court must also "determine whether it is appropriate to impose tort liability for violations of the statute." *Perry*, 973 S.W.2d at 305. This determination relates to the existence of a *duty*, "which is a question of law for the court." *Praesel v. Johnson*, 967 S.W.2d 391, 394 (Tex. 1998). In analyzing this issue, the *Perry* Court identified at least five non-exclusive factors that serve "as guides to assist a court in answering the ultimate question of whether imposing tort liability for violations of a criminal statute is fair, workable, and wise." *Perry*, 973 S.W.2d at 305-06. These factors include:

> (1) whether the statute is the sole source of any tort duty from the defendant to the plaintiff or merely supplies a standard of conduct for an existing common law duty; (2) whether the statute puts the public on notice by clearly defining the required conduct; (3) whether the statute would impose liability without fault; (4) whether negligence per se would result in ruinous damages disproportionate to the seriousness of the statutory violation, particularly if the liability would fall on a broad and wide range of collateral wrongdoers; and (5) whether the plaintiff's injury is a direct or indirect result of the violation of the statute.

Id. at 309. Applying each of these factors, the *Perry* Court held that a day-care center's violation of a child abuse reporting statute did not give rise to a tort duty owing to the parents of a child who had been sexually abused by the owner of the day-care center.

To an even greater degree than the child abuse reporting statute in *Perry*, the licensing statute at issue here does not and cannot impose tort liability based on ACS's failure to obtain a private investigator's license. *See Bell v. American Traffic Solutions, Inc.*, 633 F. Supp. 2d 305, 316 (N.D. Tex. 2009) (Fish, J.) (court grants motion to dismiss under FED. R. CIV. P. 12(b)(6) based on conclusion that "the application of a negligence

per se cause of action to the PSA's licensing requirements would be inconsistent with both Texas negligence per se jurisprudence and the Texas Legislature's apparent intent in enacting the statute."). As the federal district court held in *Bell*, each one of the *Perry* factors that informs this inquiry weighs heavily against the imposition of any tort duty upon ACS. Specifically:

(1) *Absence of pre-existing common-law duty*: The overwhelming majority of negligence per se cases have involved violations of traffic statutes by drivers and train operators -- actors who already owe a common-law duty to exercise reasonable care to others on the road. *See Perry*, 973 S.W.2d at 306. In such cases, "the statute's role is merely to define more precisely what conduct breaches that duty." *Id.* Here, by contrast, ACS has no pre-existing common-law duty to protect potential red light violators from its failure to have a private investigator's license. *See Bell*, 633 F. Supp. 2d at 314 ("there is no preexisting common law duty that would require ATS to obtain a private investigations license before it installed red-light cameras for municipalities"); *Bell*, No. 4:08-CV-444, at pp. 6-7 (the licensing requirement in chapter 1702 does not implicate any common-law right to privacy). Recognizing a new, purely statutory duty in such a case would "have an extreme effect upon the common law of negligence [because] it allows a cause of action where the common law would not." *Perry*, 973 S.W.2d at 306 (citation omitted). Such an extreme effect is even greater when, as here, the statute deals with "inaction rather than action." *Id.*

(2) *Lack of clarity*: Neither the licensing statute nor any case law clearly defines when a person may be "securing evidence for a court, board, officer, or

investigating committee," so as to require a private investigator's license under section 1702.104. Nor does the statute or any cases suggest that any of ACS's responsibilities in connection with its City of Dallas contract entailed the "securing of evidence." Indeed, as demonstrated by its letter of May 15, 2008, the Private Security Bureau of the Texas DPS does not believe that ACS was required to "secure evidence" in connection with its contract with the City of Garland involving the red light camera enforcement system. (4 CR 636-39, 774) Because section 1702.104 thus does not clearly define the required or prohibited conduct as it relates to this case, the statute should not be construed to impose a common-law tort duty.

(3) *Liability without fault*: The licensing provisions of chapter 1702 do not contain any scienter element; instead, they impose penalties for any failure to obtain a requisite license, regardless of whether that failure was with or without knowledge of the licensing requirement. These no-fault characteristics of the statute weigh against the creation of any tort duty. *Cf. Perry*, 973 S.W.2d at 308 (because the child abuse reporting statute criminalized only a knowing failure to report, this factor weighed in favor of imposing tort liability).

(4) *Disproportionate liability*: The conduct prohibited by section 1702.104 -- securing evidence without obtaining a private investigator's license -- can lead to a Class A misdemeanor or the imposition of a $10,000 civil penalty. *See* TEX. OCC. CODE §§ 1702.381, 1702.388. Either of these consequences (which can be avoided simply by applying for and purchasing a $350 license) is far less severe than the potential damages to which ACS would be exposed if it owed tort duties, merely because it did not have a

license, to every motorist who has received a citation from a red light camera violation. The specter of such disproportionate liability weighs heavily against the imposition of a tort duty. *See Bell*, 633 F. Supp. 2d at 314 ("this marked disproportionality [between the damages sought by plaintiffs and the seriousness of violating the Act's licensing requirement] likewise counsels against the imputation of a negligence per se claim in connection with a failure to obtain a private investigations license.").

(5) *Injury did not result from violation*: As discussed above in Part I(A), there is simply no causal link -- direct or indirect -- between ACS's failure to obtain a private investigator's license and the issuance of a red light citation to Ward. *See Bell*, 633 F. Supp. 2d at 314 ("Here, the plaintiffs' injuries -- receiving traffic citations for disobeying traffic laws -- are only indirectly related to ATS's alleged violation of the licensing statute. That is, whether or not ATS was properly licensed under § 1702.101 has little, if any, bearing on the plaintiffs' compliance with the traffic laws."). If anything was the cause of Ward's alleged injury, it was her own admitted liability for running the red light. The absence of any connection between ACS's failure to obtain a license and Ward's purported injury "also counsels against attaching a negligence per se cause of action to the PSA's licensing requirement." *Id*.

(6) *Other factors*: One additional factor undercuts any claim that the Texas Legislature intended a violation of chapter 1702 to create a corresponding common-law claim -- namely, the fact that chapter 1702 "already provides a comprehensive remedial scheme for violations of the Act's provisions." *Bell*, 633 F. Supp. 2d at 315. For example, section 1702.381 requires persons who violate the licensing provisions of

section 1702.101 to pay to the *state* a civil penalty of up to $10,000 per violation. TEX. OCC. CODE § 1702.381. Moreover, section 1702.383 provides that "an attorney for the [DPS], the attorney general's office, or any criminal prosecutor in [Texas]" are the only persons authorized to bring a civil suit in the event of a violation of chapter 1702. *Id.* § 1702.383. Finally, sections 1702.082-.084 include a detailed complaint-filing scheme that allows consumers and security service recipients to file written complaints, which the Texas Commission on Private Security will then investigate and adjudicate. *Id.* §§ 1702.082-.084. These provisions confirm "that the Texas Legislature did not intend for individuals to redress alleged violations of the PSA through private suit," and "likewise counsel[ ] against allowing a negligence per se claim to attach to a violation of the PSA's licensing requirements." *Bell*, 633 F. Supp. 2d at 315.

In sum, every factor that *Perry* instructs courts to consider in negligence per se cases undercuts Ward's effort to use chapter 1702 as a basis for establishing a tort duty in her favor. For this additional reason, the summary judgment against Ward's chapter 1702 negligence per se claim should be affirmed.

II. The Trial Court Correctly Granted Summary Judgment on Ward's Claims Based on ACS's Alleged Reporting of Her Unpaid Citation to Credit Agencies.

In addition to complaining about ACS's failure to obtain a private investigator's license, Ward also alleged that ACS committed various torts by allegedly reporting her unpaid red light citation to credit agencies. (1 CR 10-11) Ward's legal theories in support of this allegation changed and evolved over the course of this lawsuit, but she now rests this allegation on two statutes -- section 707.003 of the Texas Transportation

Code and section 392.001 of the Texas Finance Code (which includes the TDCA). (Br. at 20, 23) As discussed next, the trial court was correct in granting summary judgment against these claims "[f]or the reasons set forth in the briefs of ACS." (4 CR 881)

A. Ward's Claim of Negligence Per Se Based on Section 707.003 of the Texas Transportation Code Fails as a Matter of Law.

Ward's initial contention -- that ACS was negligent per se because it supposedly violated section 707.003 of the Texas Transportation Code (Br. at 19-23) -- is not even mentioned in the "Issues Presented" section of her brief (Br. at 2). Instead, Ward confusingly includes this point under her discussion of "Issue Number Two," which purportedly relates only to the "Texas Finance Code." (Br. at 19) Even if Ward's confusing treatment of her section 707.003 argument does not amount to a waiver under TEX. R. APP. P. 38.1(f), Ward's negligence per se claim based upon section 707.003 fails as a matter of law because that section does not apply to either ACS's contract with the City of Dallas or Ward's civil red light violation.

1. The contract between ACS and the City of Dallas is expressly excluded from the scope of section 707.003(h).

Chapter 707 of the Texas Transportation Code establishes rules and regulations relating to photographic traffic signal enforcement systems and prohibits, among other acts, "[a] local authority or the person with whom the local authority contracts for the administration and enforcement of a photographic traffic enforcement system [from] provid[ing] information about a civil penalty imposed under this chapter to a credit bureau." TEX. TRANSP. CODE § 707.003(h) [App. tab 8]. Ward's reliance on section

707.003(h), however, is misplaced because ACS's activities in connection with its contract with the City of Dallas indisputably are not subject to that section.

In enacting section 707.003, the Texas Legislature expressly provided that section 707.003 "applies only to a contract entered into on or after the [September 1, 2007] effective date of this Act." TEX. TRANSP. CODE ANN. § 707.003 historical note (Vernon Supp. 2009) [Acts 2007, 80th Leg., R.S., ch. 1149, § 9, 2007 Tex. Sess. Law Serv. ch. 1149]; *see* Tex. S.B. 1119 § 9, 80th Leg., R.S. (2007) [App. tab 9]; (*see also* 4 CR 699). In this case, ACS indisputably entered into its contract with the City of Dallas on October 31, 2006 -- ten months before the effective date of the statute. (2 CR 199, 213; 3 CR 453, 467; 4 CR 702, 716, 774) Accordingly, section 707.003 does not restrict ACS from providing information about a civil penalty to a credit bureau, and the trial court correctly granted summary judgment on this claim. *See also Verrando*, 2009 WL 2958370, at *5 (rejecting argument similar to Ward's and holding that that ACS's contract with the City of Dallas "is not subject to the terms of the Texas Transportation Code, Section 707.003").[5]

2. Ward's civil penalty was not imposed under chapter 707.

The trial court was also correct in dismissing Ward's section 707.003 claim because ACS did not provide information to any credit bureau about a civil penalty

[5] Tellingly, Ward cites no authority to support her erroneous contention that "each time a notice of fine was sent [by ACS] to a credit bureau after the statute was effectuated, such ACTION is a violation of the statute." (Br. at 20) Moreover, as discussed next, Ward cannot show that her civil penalty was "imposed under" chapter 707, which did not even exist at the time of her violation.

imposed under chapter 707 of the Transportation Code. By its plain terms, section 707.003(h) applies only to "a civil penalty *imposed under* [chapter 707]." TEX. TRANSP. CODE § 707.003(h) (emphasis added). Ward's civil penalty, however, was not "imposed under" chapter 707 because the violation and assessment of her civil fine occurred months before the September 2007 effective date of chapter 707.

On April 19, 2007, Ward's vehicle was photographed driving through an intersection while the traffic signal was red. (2 CR 257 [App. tab 3]; 3 CR 511; 4 CR 830, 832) Less than two weeks later, Ward received a Notice of Violation advising her that she could either contest the citation or pay the civil fine of $75 on or before May 15, 2007. (2 CR 257; 3 CR 511; 4 CR 832) Because Ward's civil violation and fine pre-date the enactment of chapter 707 by at least four months, the penalty could not have been "imposed under" a chapter of the Transportation Code that was not even in existence at the time. Not surprisingly, the Notice of Violation nowhere references chapter 707. Instead, it states that the civil fine is being imposed "[u]nder Article XIX, § 28.207 of the Code of Ordinances of the City of Dallas, Texas." (2 CR 257; 3 CR 511; 4 CR 832) For this additional reason, section 707.003(h) does not bar ACS from reporting Ward's civil penalty to a credit bureau.

ACS's reading of chapter 707 is further supported by comparing section 707.003(h) to a different section of the same chapter, in which the Legislature specifically included violations and penalties that pre-dated the September 1, 2007 effective date of chapter 707:

> SECTION 6. Section 707.008, Transportation Code, as added by this Act, and Section 782.002, Health and Safety Code, as added by this Act, apply to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this act*, regardless of whether the penalty was imposed before, on*, *or after the effective date of this Act*.

Tex. S.B. 1119 § 6, 80th Leg., R.S. (2007) (emphasis added) [App. tab 9]; (*see also* 4 CR 699). Significantly, the Legislature did not include a similar provision for section 707.003(h), further confirming that this section applies only to penalties that were imposed on or after the September 1, 2007 effective date of the Act. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion"); *LaCour v. Lankford Co.*, 287 S.W.3d 105, 111 (Tex. App.--Corpus Christi 2009, pet. denied) (same); *see also United States Servs. Auto. Ass'n v. Brite*, 215 S.W.3d 400, 403 (Tex. 2007) ("the inclusion of a specific limitation [in a statute] excludes all others"). Because the Legislature chose not to extend section 707.003(h) to cover civil penalties that pre-dated the effective date of chapter 707, the summary judgment on Ward's section 707.003(h) claim should be affirmed for this reason as well.

B. Ward's Finance Code Claim, Which Is Based on an Alleged Violation of the Texas Debt Collection Act, Fails as a Matter of Law.

1. Ward expressly abandoned her Finance Code claim.

As a threshold matter, summary judgment was proper against Ward's claim under the Texas Finance Code because Ward expressly abandoned that claim in the court below. (3 CR 312 ["Plaintiff has abandoned this Claim, and instead has asserted a claim

under the Texas Transportation Code, Section 707.003(h).”]) For this reason alone, the order granting ACS’s motion for summary judgment should be affirmed. *See Akin v. Santa Clara Land Co.*, 34 S.W.3d 334, 339 (Tex. App.--San Antonio 2000, pet denied) (plaintiff waived appellate complaint concerning trial court’s partial summary judgment on DTPA, negligent misrepresentation, and fraud claims because plaintiff had abandoned those claims in the trial court). Moreover, as discussed next, even if the Court were to reach the merits of Ward’s abandoned claim under the Texas Finance Code, that claim fails as a matter of law.

2. Ward is not a consumer under the Texas Debt Collection Act, and the money she owed for her red light violation is not a consumer debt.

To prevail under the Texas Finance Code (and more specifically, the TDCA), a plaintiff must establish that he is an individual “consumer” who has a “consumer debt” -- *i.e.*, “an obligation or alleged obligation, primarily for personal, family, or household purposes arising from a transaction or alleged transaction.” TEX. FIN. CODE § 392.001(1)-(2) [App. tab 10]. When, as here, an obligation arises outside the scope of a consumer transaction, the obligation is not a “consumer debt.” *Ford v. City State Bank of Palacios*, 44 S.W.3d 121, 136 (Tex. App.--Corpus Christi 2001, no pet.); *see also First Gibraltar Bank, FSB v. Smith*, 62 F.3d 133, 135-36 (5th Cir. 1995) (an obligation arising out of a commercial transaction does not constitute a “debt” as defined under the TDCA).

Although no Texas court has specifically determined whether the TDCA applies to fines for red light violations, courts in other jurisdictions have concluded that debt collection statutes similar to the TDCA do not apply to fines imposed by or on behalf of

governmental entities. *See United States v. Phillips*, 110 Fed. Appx. 431, 432 (5th Cir. 2004) (criminal fine and special assessment imposed on defendant by the Bureau of Prisons were not unfair debt collection practices for purposes of the Fair Debt Collection Practices Act); *United States v. Morgan*, No. 1:02-CR-109, 2006 WL 2168173, at *6 n.7 (N.D. Ind. July 31, 2006) ("[A] federal criminal fine is not a 'debt' as defined in the [Fair Debt Collection Practices Act]."); *Riebe v. Juergensmeyer & Assocs*., 979 F. Supp. 1218, 1221 (N.D. Ill. 1997) (obligation of library patron to pay a fine when she failed to return a book to library by its due date was not a "debt"); *Rector v. City and County of Denver*, 122 P.3d 1010, 1016 (Colo. App. 2005) (city's imposition of fines and fees assessed for parking violations arose outside scope of consumer transaction and thus were not actionable under federal and state debt collection acts).

In *Rector*, the case mostly closely on point, ACS had a contract with the City of Denver requiring it to prepare and process parking tickets and violation notices, send those notices to alleged violators, and collect fines and fees for the city. *Rector*, 122 P.3d at 1012. After receiving fines and late fees assessed by ACS for parking meter violations, the plaintiffs filed suit asserting that the fines and fees arose out of a consumer obligation, and thus violated the Federal and Colorado Fair Debt Collection Practices Acts. *Id.* at 1012, 1016. The plaintiffs argued that, as motor vehicle operators, they entered into contracts with the City of Denver in which they paid a certain amount of money and, in exchange, the City of Denver allowed them to use parking spaces for a certain amount of time. *Id.* at 1016. The trial court rejected the argument that the

plaintiffs were involved in a consumer transaction, and dismissed their claims under the federal and state statutes. *Id.*

In affirming the dismissal, the court of appeals concluded that "ACS only provided services to Denver, not to plaintiffs." *Id.* at 1017. Because "regulating metered parking represents an exercise of Denver's police power, to further public safety and convenience, not [the] rendition of a service to consumers by leasing parts of public streets for short-term private occupancy," there could be no violation of the debt collection practices acts as a matter of law. *Id.* at 1016.

This rationale applies here. Just as ACS in *Rector* provided services only to the City of Denver, not to the plaintiffs, ACS here provides services only to the City of Dallas, not to Ward. Moreover, ACS's red light camera system facilitates the exercise of Dallas's police powers, furthers public safety and convenience, and does not constitute the rendition of any service to purported consumers. Nor can Ward transform the red light camera system into a "city service," like sewer and water service, based on the insupportable non-sequitur that the City of Garland (not even the City of Dallas) supposedly uses its red light program to "replace all signal lights . . . [and] school crossing signs." (Br. at 23)

Based on a similar non-sequitur, Ward erroneously relies on *Pollice v. National Tax Funding*, 225 F.3d 379 (3rd Cir. 2000), and *Albanese v. Portnoff Law Associates, Ltd.*, 301 F. Supp. 2d 389 (E.D. Pa. 2004), to contend that the "enforcement of fines for failure to pay for city services (i.e.. [sic] water, sewer, and trash), create 'debt,' and the recipient or [sic] the services are 'consumers,' for purposes of debt collection statutes."

(Br. at 25) As those cases make clear, however, debt collection statutes apply only to "obligations to pay money which arise out of a *consensual* consumer transaction" and thus were intended to "protect those who have 'contracted for goods or services and [are] unable to pay for them.'" *Pollice*, 225 F.3d at 401 & n.24 (emphasis added). Thus, in both *Pollice* and *Albanese*, the plaintiffs had requested a governmental service and were fined when they failed to pay for that service. *See Pollice,* 225 F.3d at 400 (homeowners were "consumers" of water and sewer services because they had an "obligation to pay money to the government entities which arose out of a transaction (requesting water and sewer service)") (internal quotations omitted); *Albanese*, 301 F. Supp. 2d at 392 (plaintiff failed to pay fees associated with township's collection of trash from his residence).

In this case, by contrast, Ward never contracted for or otherwise requested a good or service from ACS. Nor did her fine arise out of a "consensual consumer transaction." *Pollice*, 225 F.3d at 401. Instead, it arose because her vehicle was photographed running a red light by a camera that was installed as part of a commercial transaction solely between ACS and the City of Dallas. (2 CR 199-251; 3 CR 453-505; 4 CR 702-54, 774) Under these circumstances, the TDCA does not apply as a matter of law and the trial court correctly granted summary judgment on this claim. *See, e.g.*, *Ford*, 44 S.W.3d at 135 (obligation arising out of a commercial transaction is not within the scope of the TDCA).

For similar reasons, Ward's reliance on *Campbell v. Beneficial Finance Co. of Dallas*, 616 S.W.2d 373 (Tex. App.--Texarkana 1981, no writ), and *Monroe v. Frank*, 936 S.W.2d 654 (Tex. App.--Dallas 1996, writ dism'd w.o.j.), is also misplaced. (Br. at

25, 27) Unlike the transaction at issue here, the underlying debts in both *Campbell* and *Monroe* indisputably were incurred in connection with consumer transactions. Specifically, in *Campbell*, the plaintiff brought suit under the TDCA arising from her daughter and son-in-law's purchase of household goods and furnishings. *Campbell*, 616 S.W.2d at 374. And in *Monroe*, the counter-plaintiff filed a TDCA action against a licensed bail bond agency related to a bail bond he had purchased from the agency to secure a family friend's release from jail. *Monroe*, 936 S.W.2d at 656.

Under these different and inapposite scenarios, the courts held that a TDCA action was not limited to the debtor; rather, "any person against whom the prohibited acts are committed may maintain an action for actual damages as a result of those violations." *Campbell*, 616 S.W.2d at 375; *Monroe*, 936 S.W.2d at 660. Thus, *Campbell* and *Monroe* stand for the unremarkable proposition that any person who is adversely affected by conduct prohibited by the TDCA may maintain a cause of action under the statute, even if that person was not a party to the underlying consumer transaction. *Campbell,* 616 S.W.2d at 374; *Monroe*, 936 S.W.2d at 660. Here, by contrast, Ward's fine was not incurred as part of a consumer transaction; as such, *Campbell* and *Monroe* do not assist her -- or any other person -- who might have been affected by ACS's reporting of the fine.[6] Accordingly, Ward has no cause of action under the TDCA (even assuming she

[6] *Monroe* is further distinguishable because, unlike the personal "benefit" and satisfaction the counter-plaintiff derived from helping a family friend get out of jail in that case, 936 S.W.2d at 660, Ward did not derive any benefit (directly or indirectly) from the purported transaction in which she received the red light ticket citation.

did not abandon that claim), and the trial court correctly granted ACS's motion for summary judgment for this reason as well.

PRAYER

For the reasons stated above, Appellee ACS State and Local Solutions, Inc. d/b/a LDC Collection Systems respectfully prays that the Court affirm the trial court's summary judgment dismissing all of Ward's claims, and grant ACS such other relief to which it is entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Brief for Appellee was served by hand-delivery upon the following counsel for Appellant Amanda Ward on this 12th day of November, 2009:

Lloyd E. Ward
Lloyd Ward, P.C.
17120 N. Dallas Parkway, Suite 235
Dallas, Texas 75248

/s/Jeffrey S. Levinger
Jeffrey S. Levinger

TAB 1

CAUSE NO. 07-9501-K

AMANDA WARD,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
vs:	§	192ND JUDICIAL DISTRICT
	§	
ACS STATE AND LOCAL SOLUTIONS, INC., D/B/A LDC COLLECTION SYSTEMS,	§	
	§	
	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

PARTIAL SUMMARY JUDGMENT

Came to be heard Defendant's Motion for Summary Judgment.

Defendant's Motion for Summary Judgment is granted as to the Plaintiff's causes of action relating to DTPA and the Texas Debt Collection Act.

Signed this the 30 day of January, 2008.

Judge Presiding,
192nd District Court

TAB 2

CAUSE NO. DC 07-09501-K

AMANDA WARD Plaintiff, vs. ACS STATE AND LOCAL SOLUTIONS, INC., D/B/A LDC COLLECTIONS SYSTEMS, Defendant.	§ § § § § § § § §	IN THE DISTRICT COURT OF DALLAS COUNTY, TEXAS 192ND JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT ACS STATE AND LOCAL SOLUTIONS, INC., D/B/A LDC COLLECTION SYSTEMS' SECOND AMENDED MOTION FOR TRADITIONAL AND NO-EVIDENCE SUMMARY JUDGMENT

The Court **VACATES** the Order dated March 23, 2009. The Court replaces the Order filed March 23, 2009 with this Order.

Came on to be heard the Second Amended Motion for Summary Judgment filed by ACS State and Local Solutions, Inc., d/b/a LDC Collection Systems ("ACS") and the Court being fully advised and having heard the arguments of counsel and having carefully reviewed: (1) the Motion and the discovery material referenced or set forth in the motion, and (2) the pleadings, admissions, and affidavits on file, is of the opinion that summary judgment should be granted to ACS.

The Court finds, based on the summary judgment record, that ACS is required to obtain a license under §§1702.101-104 of the Texas Occupations Code. The Court further finds that Amanda Ward's negligence claim on Chapter 1702 of the Occupations Code fails as a matter of law, as Amanda Ward has not shown evidence that supports a finding of proximate cause or a finding of damages. Therefore, this Court finds that Amanda Ward has failed to demonstrate that

her damages were proximately caused by the actions of Defendant, the Court **DISMISSES** Amanda Ward's claim of negligence based on Chapter 1702 of the Texas Occupations Code **WITH PREJUDICE.**

For the reasons set forth in the briefs of ACS, the Court **DISMISSES** Amanda Ward's remaining claims **WITH PREJUDICE.**

It is hereby **ORDERED** that Plaintiff Amanda Ward take nothing by her claims.

Signed this the 8 day of April, 2009.

Craig Smith, Judge Presiding
192nd District Court

TAB 3

NOTICE OF VIOLATION

Safelight Dallas Stops on Red

You can view full color versions of the images below at: http://www.public.etic-web.com	
Citation Number	Pin Number
D0000524066	291677887

Mail Date: 04-30-2007

Under Article XIX, § 28.207 of the Code of Ordinances of the City of Dallas, Texas, the owner of a motor vehicle is liable for payment of a minimum civil fine of $75.00* if the owner's vehicle proceeds into an intersection equipped with an automated red light enforcement system when the traffic control signal for that vehicle's direction of travel is emitting a steady red signal. A recorded image is evidence in a proceeding for the imposition of a civil fine.

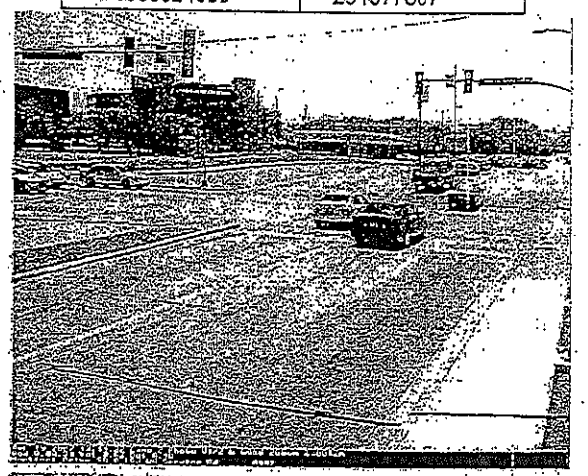
AMANDA G WARD
6040 PRESTON CREEK
DALLAS, TX 75240
41712000022

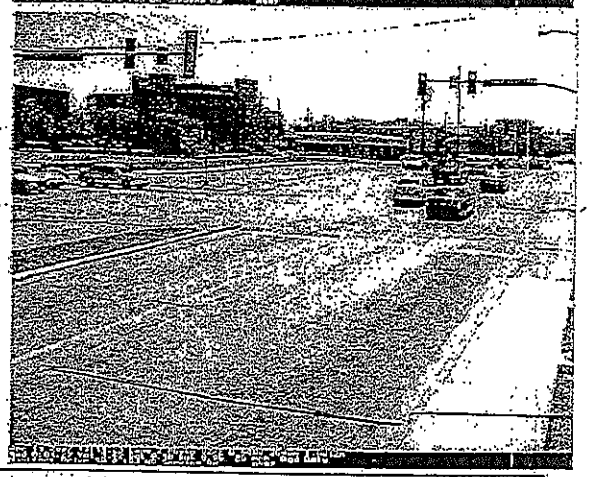
On 04-19-2007 at 1:11:22 PM , your vehicle was photographed driving through the listed intersection while the traffic signal was red.

*For a 3rd or subsequent offense in any 12-month period, the amount of the fine is $150.00.

On the back of this notice you will find detailed information regarding payment, adjudication/hearing rights, and assignment of responsibility.

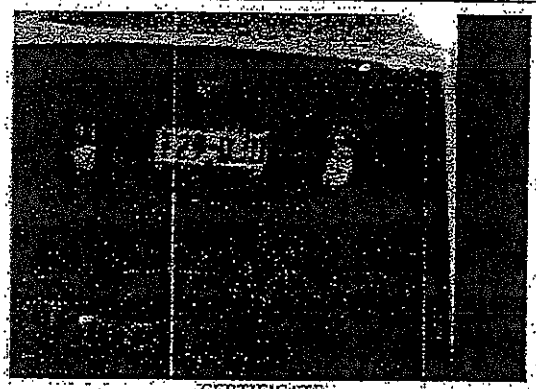
THE IMPOSITION OF A CIVIL FINE IS NOT A CONVICTION FOR ANY PURPOSE, INCLUDING INSURANCE RATES. PAYMENT OF A CIVIL FINE IS NOT REPORTED TO THE DEPARTMENT OF PUBLIC SAFETY.





COPY

If you wish to contest this citation, your court date is:
Hearing Date: 05-15-2007
Hearing Time: Between 8:30am – 4:00pm (last hearing is at 4:00pm)
Hearing Location: City Hall - 2BS, 1500 Marilla, Dallas, TX 75201



CERTIFICATE

I am a duly authorized enforcement officer for the Dallas Police Department. Based on my inspection of the recorded images shown above, the motor vehicle was operated in violation of §28.207 of the Code of Ordinances of the City of Dallas, Texas. *Sworn to or affirmed by:*

Approved: _____ *ID#:* 3278

VIOLATION INFORMATION

Notice Number:	D0000524066	Light was Red in 1st Photograph:	0.31
Violation Date:	04-19-2007	Violation Time:	1:11:22 PM
Vehicle Tag:	T29DJD TX	Vehicle Make:	CADI
Due Date:	05-15-2007	Amount Due:	$75
Location:	Montfort SB @ LBJ (IH635).WBSR		

Failure to pay the civil fine or to contest liability within (15) calendar days is an admission of liability in the full amount of the civil fine assessed and will result in an additional late fee penalty of $25.00 and the possible loss of your right to a hearing. In addition, you may be subject to formal collection procedures including, but not limited to, being reported to a credit reporting agency, and a civil lawsuit.

QUESTIONS ABOUT THIS NOTICE, CALL THE SAFELIGHT DALLAS CUSTOMER SERVICE CENTER AT (866) 247-1951

Detach and return this portion with your payment

Registered Owner of Vehicle	Notice Number	Vehicle Tag
AMANDA G WARD 6040 PRESTON CREEK DALLAS, TX 75240	D0000524066	T29DJD TX

AMOUNT DUE BY 05-15-07:	$75
AMOUNT DUE IF PAID AFTER 05-15-07:	$100

Send Check or Money Order Payable to:
City of Dallas
Safelight Dallas Stops On Red
PO Box 650302
Dallas, TX 75265-0302

Amount Paid: $

ACS/LDC 0005

0257

EXHIBIT 10

TAB 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BELL, et al.	§	
	§	
v.	§	Case No. 4:08-cv-444
	§	
REDFLEX TRAFFIC SYSTEMS, INC.	§	

ORDER GRANTING DEFENDANT REDFLEX'S MOTION TO DISMISS

Now before the Court is Defendant Redflex Traffic Systems, Inc.'s Motion to Dismiss Plaintiff's Original Complaint (Doc. No. 4). After oral argument and having considered the motion, Plaintiff's Response,[1] Defendant's reply, and the complaint in this case, the Court finds that it is without jurisdiction over the action and GRANTS Defendant's motion to dismiss.

BACKGROUND

In 2007, Texas adopted a law that expressly authorized cities to install cameras at intersections with traffic signals. Tex. S.B. 1119, 80th Leg., R.S. (2007) (codified at Tex. Transp. Code Ann. §§ 707.001-.019). These red light cameras capture images of drivers who run red lights, and the cities use the images to ticket drivers. Defendant Redflex Traffic Systems, Inc. (Redflex) manufactures and maintains red light cameras pursuant to contracts with the cities of Plano and Duncanville. In 2008, Plaintiffs Mohammed Al Musa and TPS, Inc. received tickets from the City of Plano for running red lights, and Plaintiff Steven Bell received a similar ticket from the City of

[1]In clear violation of Local Rule CV-7(c), Plaintiffs filed their response in two parts: Plaintiff's Response to Motion to Dismiss Filed By Defendant Redflex Traffic Systems (Doc. No. 16) and their Brief in Support of Response to Motion to Dismiss Filed By Defendant Redflex Traffic Systems (Doc. No. 17). This order will refer to these documents together as Plaintiff's response. Furthermore, the Court admonishes both parties for their blatant violation of the page limits set forth in Local Rule CV-7(a)(1).

Duncanville. Plaintiffs' tickets were generated using red light cameras provided by and maintained by Defendant Redflex. Plaintiffs do not deny having run the red lights, nor have they raised any challenges to the factual accuracy of the pictures produced by Defendant's red light cameras.[2]

Plaintiffs challenge Redflex's red light camera on the grounds that Redflex failed to apply for and obtain a private investigator's license from the State of Texas. Texas requires private investigators to obtain a license, which Defendant Redflex did not have.[3] On this basis, Plaintiffs request class certification and seek actual damages, attorney's fees, and punitive damages in excess of three million dollars ($3,000,000). Plaintiffs also seek a permanent injunction that would prohibit Redflex from operating without a private investigator's license. Plaintiffs' sole cause of action is for negligence *per se* based on the licensing statute.

Defendant Redflex filed its Motion to Dismiss Plaintiff's Original Complaint (Doc. No. 4) on January 30, 2009. Redflex moves for dismissal on two grounds: (1) Plaintiffs' lack of standing to bring this action and (2) Plaintiffs' failure to state a claim.

LEGAL STANDARD

The Court considers a motion to dismiss for lack of subject matter jurisdiction under the same standard as a motion to dismiss for failure to state a claim. *Robinson v. TCI/US West Communications Inc.*, 117 F.3d 900, 904 (5th Cir. 1997). The court must consider whether Plaintiffs

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[2]The proper venue to raise such a challenge would be on direct appeal of the proceeding related to the ticket, rather than recourse to the federal courts.

[3]Plaintiffs allege that Redflex falls within this Texas Occupations Code's definition of a private investigator and thus must be licensed by the state. However, Redflex is not licensed. Plaintiff's sole cause of action seeks recovery under a negligence *per se* theory for Redflex's failure to comply with the licensing statute. The parties have spent considerable time and effort addressing whether the licensing requirement applies to red light manufacturers such as Redflex. However, the Court assumes without deciding that the statute applies to Defendant Redflex.

can prove any set of facts in support of their claim which would entitle them to relief. *Id.* The Court may rest its resolution of a motion to dismiss for lack of subject matter jurisdiction on facts alleged in Plaintiffs' complaint, any undisputed facts, and the Court's resolution of disputed facts. *Id.*

The Constitution limits the jurisdiction of this Court to "cases" and "controversies." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). Whether Plaintiffs have standing to assert their claims is a fundamental component of the case and controversy requirement. *Id.* at 560. Absent standing, the Court is without jurisdiction to adjudicate the claims before it. *Id.*

Plaintiffs bear the burden to demonstrate that they have standing to bring this action. *Id.* at 561. Standing requires that (1) the plaintiffs have suffered an injury in fact; (2) the injury is fairly traceable to the conduct complained of; and (3) the injury will likely be redressed by a favorable decision. *Lujan v. Defendars of Wildlife*, 504 U.S. 555, 560-61 (1992).

ANALYSIS

Plaintiffs have failed to allege facts that support their standing to assert the claims now before the Court. Specifically, Plaintiffs have not alleged that they have suffered an injury in fact that is traceable to Defendant Redflex's actions challenged in this lawsuit. Plaintiffs seem to be asserting two types of injury: (1) the cost of their tickets and incidental costs; and (2) invasion of their privacy.[4] Neither of these constitutes an injury sufficient to establish Plaintiffs' standing.

An injury in fact is an invasion of a legally protected interest that is concrete and particularized and actual or imminent. *Lujan*, 504 at 560. Plaintiffs' costs incurred from running

[4]The Court notes that Plaintiffs' complaint does not assert a violation of a privacy interest nor seek damages for invasion of privacy. However, the Court assumes—in light of Plaintiffs' request to replead—that Plaintiffs would amend their complaint to include a claim for violation of privacy if given leave to do so.

the red light are not legally protected. Furthermore, Plaintiffs do not have a protected privacy interest while sitting in their vehicles in a public intersection.

A. The Cost of Plaintiffs' Tickets

Plaintiffs complain that they were forced to pay the cost of their red light tickets and incur other incidental costs. But Plaintiffs have no standing to complain that Redflex produced evidence against them. Equally unavailing are Plaintiffs' concerns that they were forced to bear the consequences of their illegal action.[5]

Redflex has not abridged any of Plaintiffs rights by the mere act of providing evidence against them, even if that evidence was illegally obtained. Defendant Redflex may have obtained the evidence illegally,[6] but that does not end the Court's inquiry. The next step—which Plaintiffs overlook—is whether Defendant Redflex's actions were in derogation of any of Plaintiffs' rights.

A criminal defendant has no general right to be free from illegally procured evidence. *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). Only evidence secured in violation of the complaining defendant's rights have garnered protection from the courts. *Id.*; *Wong Sun v. United States*, 371 U.S. 471, 492 (1963). There is no reason to expand that rule in this case. Like the criminal defendant, Plaintiffs must point to something more than the production of illegally procured evidence.

The "something more" that Plaintiffs point to is the costs they have incurred from running red lights. However, Plaintiffs do not have an interest in getting away with their illegal conduct. Plaintiffs are correct that their guilt does not open the door for Defendant to infringe on

[5] As noted above, Plaintiffs have not challenged the factual accuracy of the photographs or the validity of the fine imposed, nor is this the proper forum to challenge the findings of the state proceeding.

[6] This order does not address that issue.

Plaintiffs' otherwise legally protected rights and interests. However, Plaintiffs do not have a legally protected right to engage in illegal conduct and be free from the consequences of that activity. For example, in the criminal context, even a guilty defendant has certain rights on which the government may not tread in its efforts to secure evidence against the defendant. *Katz v. United States*, 389 U.S. 347, 350 (1967). Thus, a criminal defendant may successfully complain of government activity that infringes on the defendant's right, such as a warrantless search. *Schmerber v. California*, 384 U.S. 757, 770 (1966). Yet, the criminal defendant who complains only that the government's activity thwarted his illegal conduct or led to his conviction has no standing for relief—either through exclusion of the evidence or in the form of a private cause of action. *See, e.g., United States v. Jacobsen*, 466 U.S. 109, 121 (holding that a Defendant has no reasonable expectation of privacy in a package which clearly contains contraband). To allow otherwise would completely turn our criminal justice system—a primary goal of which is to prevent criminal action—on its head. The same is true in the case at hand. Plaintiffs' allegation that they suffered consequences for violating the law is unavailing. This can not form the foundation for Plaintiffs' right to bring this action.

Plaintiffs adamantly attempt to distract the Court with the fact that Defendant Redflex's cameras generated the evidence used against Plaintiffs. Plaintiffs repeatedly remind the court that (1) they paid the traffic fines; and (2) the fines resulted "solely and entirely" from Defendant Redflex's photographs. But the first element of standing is injury in fact, and that is where Plaintiffs' argument fails. Defendant's actions—illegal or otherwise—are of no consequence if Plaintiffs suffered no legal injury. The Fifth Circuit has upheld standing in environmental actions where plaintiffs sued a defendant for failing to acquire the proper permit. *Save Our*

Community v. U.S. Environmental Protection Agency, 971 F.2d 1155, 1161 (5th Cir. 1992) (per curium). However, the court based plaintiffs' standing on their articulated right to enjoy and use the resources being disparaged. *Id.* Here Plaintiffs have demonstrated no independent right that Defendant's actions have infringed. To be sure, Plaintiffs have suffered a monetary loss in the form of fines and other incidental costs. But the Court's standing analysis considers only injury to a legally protected interest. For the reasons discussed above, Plaintiffs' loss does not rise to that level.

B. **Privacy Interest**

Plaintiffs also assert their right to privacy as the basis for their standing to bring this action. Courts have long recognized the right to privacy as a legally protected interest. *Collins v. Collins*, 904 S.W.2d 792, 797 (Tex. App.—Houston [1st Dist.] 1995, *writ denied*). However, Plaintiffs have alleged no facts that place in issue their protected privacy interests.

The constitutionally founded right to privacy is limited by an objective expectation of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967) (J. Harlan concurring). Furthermore, this constitutional protection applies only to invasions by the government. *See,* e.g., *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921). *See also Texas State Employees Union v. Dep't of Mental Health*, 746 S.W.2d 203, 205 (Tex. 1987) ("This right to privacy should yield only when *the government* can demonstrate that an intrusion is reasonably warranted... .) (*emphasis added*). Thus, the Court must look to some other source of Plaintiffs' alleged right to privacy.

Texas common law establishes a private cause of action for invasion of privacy. An invasion of privacy action requires: (1) an intentional intrusion, physically or otherwise, upon another's solitude, seclusion, or private affairs or concerns, which (2) would be highly offensive

to a reasonable person. *Valenzuela v. Aquino*, 853 S.W.2d 512, 513 (Tex. 1993). Plaintiffs were driving down a public street when the Redflex cameras photographed them. Certainly, Plaintiffs' actions do not fall under the umbrella of "private affairs or concerns" and thus fall outside the common law cause of action.

Finally, Plaintiffs look to the Texas Occupation Code as the source of their privacy interest. The statute imposes a licensing requirement on all entities that act as an investigations company. Tex. Occ. Code §. 1707.104.[7] The Court finds that the Texas Occupation Code does not establish a new and independent right to privacy because the law cited by Plaintiffs is mere a licensing statute.

Plaintiffs have asked this court to recognize a privacy interest that would protect citizens from being photographed while driving through a public intersection. In comparison, it is without doubt that had a police officer observed Plaintiffs running the red lights, Plaintiffs could not claim that their tickets resulted from a breach of their privacy. The Court will not read into a mere licensing statute an implied protection from private action, where the law does not protect against an identical government action.

Plaintiffs draw comparisons to wire tapping statutes to support their argument. However, these analogies are without merit. First, the wiretap statutes establish an express private cause of action. *Collins v. Collins*, 904 S.W.2d 792, 796 (Tex. App.–Houston [1st Dist.] 1995, writ denied). Second, the wiretap statutes apply to both state and private action. *See, e.g., id.* Finally, and most importantly, the wiretap statutes involve intrusion into a traditionally recognized zone of privacy. The Court notes a fundamental distinction between recording communications

[7] The Court assumes without deciding that Defendant Redflex falls within the definition of an investigations company for purposes of this order.

which one party believes are private and driving a vehicle on a public street.

The Court finds no basis to read into the Texas Occupation Code a new and independent right of privacy. Accordingly, Plaintiffs' asserted right to privacy does not support their standing to bring the present action.

CONCLUSION

It is clear from Plaintiffs' pleadings and their response to the Defendant Redflex's motion to dismiss that Plaintiffs' challenge is more accurately directed at the legitimacy of red light camera programs. However, this Court is not the proper venue to address the Texas Legislature's wisdom in authorizing the use of red light cameras by local governments. Plaintiffs' sole cause of action relates to Defendant Redflex's failure to obtain a private investigator's license. The Court finds that Plaintiffs do not have standing to complain of Defendant Redflex's failure to obtain this license. Accordingly, Defendant Redflex's Traffic Systems, Inc.'s Motion to Dismiss Plaintiff's Original Complaint (Doc. No. 4) is GRANTED, and Plaintiffs' claims are dismissed with prejudice.

SIGNED this 25th day of March, 2009.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

TAB 5

fire codes and nuisance abatement laws to perform improper searches of residences under the guise of code enforcement"; (2) "the misuse of building and fire codes and nuisance laws to impose greater duties on property owners than is required by law"; (3) "the enforcement of building and fire codes and nuisance laws without regard for the provisions of the [FHA]"; and (4) "a conscious decision by [Councilmember Blaydes] to remove 10,000 multi-tenant units in the Lake Highlands area with a conscious disregard for the displacement of low-to-moderate income families." P. Br. 33–34.

The court concludes that a reasonable jury could not find in AHF's favor on its disparate impact theory. First, the court disregards the alleged desire of Councilmember Blaydes to remove apartment units in Lake Highlands. Even if true, a reasonable jury could not find that the desire of a single city councilmember amounted to a policy, procedure, or practice of the City. Second, the other alleged policies all relate to the City's alleged misuse of the Building Code, Fire Code, and nuisance laws. Even assuming that this alleged misuse is widespread such that it could be considered a policy, procedure, or practice (rather than limited to the City's actions at Bent Creek), AHF has not demonstrated that it relates to the availability of housing, i.e., that it amounts to constructive eviction. Third, AHF has failed to designate statistical evidence that shows that this alleged misuse has a disproportionate effect on the availability of housing for racial minorities or families with children as opposed to Caucasian or single individuals.[14] Thus a reasonable jury could not find in AHF's favor, and the City is entitled to summary judgment dismissing AHF's disparate impact theory.

* * *

Accordingly, for the reasons explained, as to AHF's remaining claims under the FHA, the court grants the City's November 14, 2008 motion for summary judgment, grants Sgt. Gilstrap and Cpl. Todd's November 14, 2008 motion for summary judgment, and dismisses this lawsuit with prejudice by judgment filed today.

SO ORDERED.

Steven BELL, individually and on behalf of others similarly situated, et al., Plaintiffs,

v.

AMERICAN TRAFFIC SOLUTIONS, INC., Defendant.

Civil Action No. 3:08–CV–2093–G.

United States District Court,
N.D. Texas,
Dallas Division.

June 18, 2009.

Background: Motorists, who each received separate traffic citations for failing

14. The City devotes a considerable part of its opening brief regarding the disparate impact claim to critiquing the putative statistical analysis of one of AHF's designated experts, Dr. Gary Lacefield ("Dr. Lacefield"). In response, however, AHF does not rely on, or even refer to, any of Dr. Lacefield's opinions. Accordingly, the court declines to comb through Dr. Lacefield's expert report to determine whether he proffers any statistical analysis that could support AHF's disparate impact claim. *See, e.g., Arrieta v. Yellow Transp., Inc.*, 2008 WL 5220569, at *2 n. 3 (N.D.Tex. Dec. 12, 2008) (Fitzwater, C.J.) ("It is well settled that the court is not obligated to comb the record in search of evidence that will permit a nonmovant to survive summary judgment.") (citing *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006)).

to adhere to traffic control signals, brought action against government contractor which contracted with city to install and administer red-light camera systems in those cities. Contractor moved to dismiss for absence of standing and failure to state a claim.

Holdings: The District Court, A. Joe Fish, Senior District Judge, held that:

(1) motorists had standing to assert claims;

(2) issue of whether contractor was subject to licensure requirement could not be resolved on motion to dismiss;

(3) contractor's failure to obtain license was not negligence per se; and

(4) motorists lacked private right of action for injunctive relief.

Motion granted.

1. Federal Civil Procedure ⇐103.2, 103.3

The irreducible constitutional minimum of Article III standing has three elements; first, the plaintiffs must have suffered an injury in fact, an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical, second, there must be a causal connection between the injury and the conduct complained of, and third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. U.S.C.A. Const. Art. 3, § 2, cl. 1.

2. Federal Civil Procedure ⇐103.2, 1742(2)

Lack of standing is a defect in subject matter jurisdiction.

3. Federal Courts ⇐30

Federal district courts have the unique power to make factual findings which are decisive of subject matter jurisdiction.

4. Federal Civil Procedure ⇐1742(2), 1832

Federal Courts ⇐32, 33

District court has the power to dismiss for lack of subject matter jurisdiction, and thus for lack of standing, on any one of three separate bases; (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts.

5. Detectives and Security Guards ⇐4

Motorists' allegations that they received and paid $75.00 traffic citations that were issued as a result of improperly acquired evidence through use of red-light cameras was sufficient to allege an injury of a legally protected interest, as required to establish standing to assert claim that government contractor, which contracted with cities to install and administer red-light camera systems in those cities, was negligent per se in failing to obtain private investigations license under Texas Private Security Act, even though motorist had not demonstrated how contractor's possession of an investigations license would have prevented the traffic citations. Vernon's Ann.Texas C.C.P. art. 38.23; V.T.C.A., Occupations Code § 1702.001 et seq.

6. Federal Civil Procedure ⇐103.2, 103.5

Plaintiffs bear the burden of showing they possess the requisite standing to bring case, and at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss courts presume that general allegations embrace those specific facts that are necessary to support the claim.

7. Detectives and Security Guards ⇐4

Motorists' allegation that evidence giving rise to traffic violations, through

cities' use of red-light cameras, was obtained illegally since contractor who installed and administered cameras did not comply with alleged licensing requirements of Texas Private Security Act, was sufficient to allege that motorists' injuries were fairly traceable to contractor's conduct, as required to establish standing to assert claim that contractor was negligent per se in failing to obtain private investigations license. V.T.C.A., Occupations Code § 1702.001 et seq.

8. Federal Civil Procedure ⇐1831

Issue of whether government contractor, which contracted with cities to install red-light camera systems in those cities, fell within Texas Private Security Board's exception to required private investigations license under Texas Private Security Act, could not be resolved on motion to dismiss, in view of factual dispute as to whether the red-light cameras at issue were operated and overseen by the cities rather than contractor. V.T.C.A., Occupations Code § 1702.005(a).

9. Negligence ⇐238

Under Texas law, negligence per se tort concept allows a civil court to adopt a legislatively imposed standard of conduct as the standard of a reasonably prudent person.

10. Negligence ⇐259

Threshold questions in a negligence per se case are whether the plaintiff belongs to the class that the statute was intended to protect and whether the plaintiff's injury is of a type that the statute was designed to prevent.

11. Negligence ⇐259, 409

In considering whether it is appropriate to impose per se negligence liability for violations of a particular statute under Texas law, courts consider (1) whether the statute is the sole source of any tort duty from the defendant to the plaintiff or merely supplies a standard of conduct for an existing common law duty; (2) whether the statute puts the public on notice by clearly defining the required conduct; (3) whether the statute would impose liability without fault; (4) whether negligence per se would result in ruinous damages disproportionate to the seriousness of the statutory violation, particularly if the liability would fall on a broad and wide range of collateral wrongdoers; and (5) whether the plaintiff's injury is a direct or indirect result of the violation of the statute.

12. Detectives and Security Guards ⇐4

Government contractor's failure, as contractor which installed and administered cities' red-light cameras, to obtain private investigations license under Texas Private Security Act, did not constitute negligence per se as to motorists cited under red-light cameras; there was no preexisting common law duty that would have required contractor to obtain a private investigations license before installing cameras, motorists' $3 million damage award based on contractor's failure to obtain a $350 license was grossly disproportionate to seriousness of alleged offense, motorists' alleged injuries, the receipt of citations, were only indirectly related to contractor's alleged violation, and statute already provided a comprehensive remedial scheme for violations of its provisions. V.T.C.A., Occupations Code § 1702.101.

13. Detectives and Security Guards ⇐4

Even if government contractor's failure, as contractor which installed and administered cities' red-light cameras, to obtain private investigations license under Texas Private Security Act was negligence per se, plaintiff motorists alleged only economic damages consisting of individual $75 fines assessed against them for running red lights, so as to warrant dismissal of

negligence per se claims under economic loss rule. V.T.C.A., Occupations Code § 1702.101.

14. Action ⇐3

Injunction ⇐107

Motorists, who each received separate traffic citations for failing to adhere traffic control signals, lacked a private right of action for injunctive relief, under Texas Private Security Act, seeking to prohibit government contractor that installed red-light cameras from acting as a private investigative agency without an appropriate license. V.T.C.A., Occupations Code § 1702.382.

Lloyd E. Ward, Lloyd Ward & Associates, Dallas, TX, for Plaintiffs.

Carrie Lee Huff, Barry Frank McNeil, Haynes & Boone, John A. Tancabel, Haynes & Boone LLP, Dallas, TX, for Defendant.

MEMORANDUM OPINION AND ORDER

A. JOE FISH, Senior District Judge.

Before the court is the motion of the defendant, American Traffic Solutions, Inc. ("ATS"), to dismiss the complaint of the plaintiffs, Steven Bell, Alexis Monrreal, and Jacqueline Monrreal (collectively, "the plaintiffs"), for lack of standing and for failure to state a claim. For the reasons set forth below, ATS's motion to dismiss is granted.

I. *BACKGROUND*

The plaintiffs are three individuals who, in the summer of 2008, each received separate traffic citations for failing to adhere to traffic control signals. Specifically, the plaintiffs were separately cited for "running a red light." Original Complaint ("Complaint") ¶ 9. The plaintiffs were photographed committing the traffic violations by a photographic traffic signal enforcement system—a device more commonly known as a red-light camera. *See id.* ¶¶ 9–10, 12.[1] ATS is a privately owned corporation that provides photographic traffic signal enforcement systems. Defendant ATS's Motion to Dismiss and Supporting Brief ("Motion to Dismiss") at 3. ATS contracted with the cities of Arlington and Irving, Texas, (the cities in which the plaintiffs' respective traffic violations occurred) to install and administer the red-light camera systems in those cities. *Id.; see also* Complaint ¶¶ 9, 12. The plaintiffs argue that Texas law—specifically, the Private Security Act[2] ("the Act" or "the PSA")—requires ATS to obtain a private investigations license from the state and to maintain a surety bond before it can lawfully install the red-light cameras on behalf of Texas municipalities. Complaint ¶ 12. The plaintiffs contend that ATS's failure to obtain the license prior to installing the cameras violates the Act's licensing provisions and thus constitutes negligence per se. *Id.* ¶¶ 17–19. Accordingly, plaintiffs seek to represent a putative class of individuals who have received traffic violations from ATS's red-light cameras in Arlington and Irving. *Id.* ¶¶ 13–16. The plaintiffs also seek injunctive relief and pray for damages in excess of three million dollars. *Id.* ¶¶ 19–22.

1. The plaintiffs do not assert that they are not guilty of the traffic violations.

2. Private Security Act, Tex. Occ.Code Ann. § 1702.001 *et seq.* (Vernon 2004 & Supp. 2008).

ATS brings this motion to dismiss on two principal theories: (1) that the plaintiffs lack standing to pursue this cause of action, or alternatively, (2) that the plaintiffs have failed to state a claim upon which relief can be granted. Motion to Dismiss at 7–9. ATS also attacks the propriety of the plaintiffs' requests for injunctive relief, because the PSA, according to ATS, does not create a private cause of action for which a permanent injunction can issue. *Id.* at 14.

II. *ANALYSIS*

A. *Motion to Dismiss for Lack of Standing*

[1] Article III of the United States Constitution limits federal courts' jurisdiction to "cases" and "controversies." U.S. Const. Art. III § 2. Standing—*i.e.*, the need to show that the plaintiff has a direct, personal stake in the outcome of the suit—is an "essential and unchanging part" of this case-or-controversy requirement. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). "The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of [the jurisdictional] doctrines." *United States v. Hays*, 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995) (quoting *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230–231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)) (internal quotation marks omitted); see also *Sommers Drug Stores Company Employee Profit Sharing Trust v. Corrigan*, 883 F.2d 345, 348 (5th Cir.1989) (" 'Standing, since it goes to the very power of the court to act, must exist at all stages of the proceeding, and not merely when the action is initiated or during an initial appeal.' ") (quoting *Safir v. Dole*, 718 F.2d 475, 481 (D.C.Cir.1983), *cert. denied*, 467 U.S. 1206, 104 S.Ct. 2389, 81 L.Ed.2d 347 (1984)); *University of South Alabama v. American Tobacco Company*, 168 F.3d 405, 410 (11th Cir. 1999) (noting that "it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking"). As the Supreme Court explained in *Lujan*, the "irreducible constitutional minimum of standing" has three elements:

> First, the plaintiff[s] must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.' " Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

504 U.S. at 560, 112 S.Ct. 2130 (internal citations and footnote omitted).

[2] Lack of standing is a defect in subject matter jurisdiction. See *Haase v. Sessions*, 835 F.2d 902, 906 (D.C.Cir.1987) (citing *Bender v. Williamsport Area School District*, 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986)); see also *Corrigan*, 883 F.2d at 348 ("standing is essential to the exercise of jurisdiction, and ... lack of standing can be raised at any time by a party or by the court.") (citing *United States v. One 18th Century Colombian Monstrance*, 797 F.2d 1370, 1374 (5th Cir.1986), *cert. denied*, 481 U.S. 1014, 107 S.Ct. 1889, 95 L.Ed.2d 496 (1987)).

[3, 4] Federal district courts have the unique power to make factual findings which are decisive of subject matter juris-

diction. See *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir.1981) (citing, among other authorities, *Land v. Dollar*, 330 U.S. 731, 735 n. 4, 67 S.Ct. 1009, 91 L.Ed. 1209 (1947)), *cert. denied*, 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981). The district court has the power to dismiss for lack of subject matter jurisdiction—and thus for lack of standing—on any one of three separate bases: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Williamson*, 645 F.2d at 413; *Robinson v. TCI/US West Communications Inc.*, 117 F.3d 900, 904 (5th Cir. 1997); see also *Haase*, 835 F.2d at 907 (noting that, to the extent the assessment of a plaintiff's standing turns on factual evidence, a court may consider all matters developed in the record at the time of its decision).

[5] ATS asserts that the plaintiffs lack standing because they have not sustained an injury-in-fact and because the traffic citations are not fairly traceable to ATS's failure to obtain a license. Motion to Dismiss at 8. ATS argues that having to pay a civil penalty to redress a traffic violation cannot constitute an injury-in-fact. *Id.* Moreover, ATS contends, even if there were a true injury-in-fact, there is no causal connection between ATS's failure to obtain the license on the one hand, and the injury to plaintiffs on the other. *Id.* at 8–9. The plaintiffs respond that their injuries flow from their traffic citations and associated traffic fines, which were based "solely and entirely" upon evidence collected by ATS using its red-light camera system. Brief in Support of Plaintiff's Response to ATS's Motion to Dismiss ("Response Brief") at 4. The plaintiffs argue that such evidence was obtained in contravention of the PSA's provisions, which require investigations companies to obtain state licenses. *Id.* at 7, 9–10.

[6] The plaintiffs bear the burden of showing they possess the requisite standing to bring this case, and at the pleading stage, "general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim.'" See *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130 (quoting *Lujan v. National Wildlife Federation*, 497 U.S. 871, 889, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990)). The plaintiffs allege that they received traffic citations that were issued as a result of improperly acquired evidence. Complaint ¶¶ 4, 12; Response Brief at 2. The plaintiffs do not demonstrate how ATS's possession of a license would have prevented plaintiffs' traffic tickets, but at this stage of the case, they need not do so. See *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130. The plaintiffs assert that they have paid $75 fines to the cities based upon improperly collected photographic evidence. Response Brief at 2. It is conceivable that plaintiffs have an interest in not being charged with traffic violations based upon evidence collected in violation of Texas law.[3] Taking, as it must, the plaintiffs' factual allegations as true, and presuming that the plaintiffs' general allegations embrace specific facts necessary to support their claims, see *Lujan*, 504 U.S. at 561, 112 S.Ct. 2130, the court finds that the plaintiffs have, at this stage of the case, aptly demonstrated that an injury of a legally protected interest may exist, and as such, have fulfilled the

3. Texas law proscribes the use of evidence against a criminal defendant when such evidence is obtained in violation of any Texas law. *See* Tex.Code.Crim. Proc. Ann. art. 38.23(a) (Vernon 2005 & Supp. 2008).

requirements of the first prong of the standing analysis.

[7] The plaintiffs' allegations also sufficiently demonstrate that their injuries are fairly traceable to ATS's installation of the red-light cameras without a license. That is, the plaintiffs assert that the evidence giving rise to their traffic violations was illegally obtained since ATS did not comply with the alleged licensing requirements of the PSA. Complaint ¶ 12. Therefore, for purposes of establishing standing at this stage of the case, the plaintiffs have shown that their alleged injuries are fairly traceable to ATS's conduct. Accordingly, the second prong of the standing analysis is satisfied. Since a favorable outcome for the plaintiffs could conceivably redress their injuries, the court finds that the plaintiffs have established the requisite standing to pursue this claim, and ATS's motion to dismiss plaintiffs' claims for lack of standing is denied.

B. *Motion to Dismiss for Failure to State a Claim*

The defendants also move to dismiss the case pursuant to Federal Rule of Civil Procedure 12(b)(6), alleging that the plaintiffs have failed to state a claim upon which relief can be granted. Motion to Dismiss at 9. "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.'" *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir.2007) (quoting *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007)), *cert. denied*, —— U.S. ——, 128 S.Ct. 1230, 170 L.Ed.2d 63 (2008). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S.Ct. at 1964–65 (citations, quotations marks, and brackets omitted). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal*, 495 F.3d at 205 (quoting *Twombly*, 127 S.Ct. at 1965). "The court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Id.* (internal quotation marks omitted) (quoting *Martin K. Eby Construction Company v. Dallas Area Rapid Transit*, 369 F.3d 464 (5th Cir.2004)).

1. *The Licensing Requirement*

[8] The plaintiffs assert that ATS, as a provider of the red-light camera system, is required to be licensed under the PSA because ATS is an investigations company within the meaning of the statute. Complaint ¶ 12.[4] The plaintiffs further assert that ATS's failure to obtain the license in violation of the PSA's licensing requirements constitutes negligence per se. *Id.* ¶¶ 17–19. ATS, on the other hand, contends that the PSA's licensing requirements are inapplicable to ATS, since ATS is acting as a government agent when it administers the red-light camera system on behalf of the cities. Motion to Dismiss at 11. ATS also points the court to an opinion of the Texas Private Security Board as support for the proposition that

4. The PSA provides that a person acts as an investigations company if the person "engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigating committee." Tex. Occ.Code Ann. § 1702.104(a)(2) (Vernon 2004 & Supp. 2008). Thus, plaintiffs argue, ATS is an investigation company and is subject to the licensing requirements of § 1702.101.

the PSA does not apply to companies like ATS that contract with municipalities to install red-light camera systems. *Id.* at 12–13.

The Texas Private Security Board (the "Board") is the state agency charged with enforcing the PSA. *See* Tex. Occ.Code Ann. § 1702.005(a) (Vernon 2004); *see also* § 1702.002(1–b) (Vernon 2004 & Supp. 2008). The Texas Legislature has delegated to the Board responsibility for licensing investigations companies, and the Board is authorized to regulate all license holders. *Id.* §§ 1702.004(a)(1), (5). The Board has publicly opined that § 1702 does not require those companies that "assist a municipality with the administration of a photographic traffic signal enforcement system to obtain licenses as private investigators." *See* Opinion of the Texas Private Security Bureau ("Board Opinion"), attached as exhibit A to ATS's Appendix to its Motion to Dismiss. This is based on the Board's understanding that photographic traffic systems with which the Board is familiar "are operated and overseen by the municipalities, not by the contractors." *Id.* Importantly, the Board acknowledges that its opinion that contractors who provide red-light cameras do not require licensure under the PSA is based on the Board's "understanding of the most common contractual arrangements and may not be applicable to all such contracts between governmental entities and private vendors." *Id.*

Texas administrative law allows the court to afford deference to the Board's expressed opinion. See *Dodd v. Meno*, 870 S.W.2d 4, 7 (Tex.1994) ("Construction of a statute by the administrative agency charged with its enforcement is entitled to serious consideration, so long as the construction is reasonable and does not contradict the plain language of the statute."); *see also* Tex. Gov't Code Ann. § 311.023(6) (Vernon 2005 & Supp. 2008) (in construing a statute, a court may consider, among other things, the "administrative construction of the statute"). However, because the court cannot, at this stage, ascertain whether the red-light cameras at issue are operated and overseen by the cities rather than ATS, the court cannot determine whether the system fits within the common contractual arrangements upon which the Board's opinion is based, or whether, alternatively, ATS's contractual arrangements with the cities are instead of the type that would bring them within the Board's stated exception. *See* Board Opinion (noting that there may be types of red-light camera contracting arrangements to which the Board's opinion would not apply). It may well be that ATS's red-light camera system is precisely the kind of system that the Board believes is not subject to the Act's licensing requirements. At the pleading stage, however, the court simply cannot make that determination on the scant record *sub judice*. Thus, the court cannot dismiss plaintiffs' claims purely upon the basis that ATS is not required to obtain a PSA license.

2. *Negligence Per Se*

[9, 10] Because the court cannot, at this stage, determine whether ATS is required by the PSA to be licensed, the court will evaluate the plaintiffs' negligence per se claims to determine whether those claims pass Rule 12(b)(6) muster. The negligence per se tort concept allows a civil court to adopt a legislatively imposed standard of conduct as the standard of a reasonably prudent person. See *Carter v. William Sommerville & Son, Inc.*, 584 S.W.2d 274, 278 (Tex.1979). "When a statute criminalizes conduct that is also governed by a common law duty, as in the case of a traffic regulation, applying negligence per se causes no great change in the law because violating the statutory stan-

dard of conduct would usually also be negligence under a common law reasonableness standard."[5] *Perry v. S.N.*, 973 S.W.2d 301, 306 (Tex.1998) (citations omitted). "But recognizing a new, purely statutory duty can have an extreme effect upon the common law of negligence when it allows a cause of action where the common law would not." *Id.* (citations and internal quotations omitted). "The threshold questions in a negligence per se case are whether the plaintiff belongs to the class that the statute was intended to protect and whether the plaintiff's injury is of a type that the statute was designed to prevent." *Osti v. Saylors*, 991 S.W.2d 322, 327 (Tex.App.-Houston [1st Dist.] 1999, pet. denied) (citations omitted).

The PSA prohibits a person from engaging "in the business of securing, or accepting employment to secure, evidence for use before a court, board, officer, or investigating committee" without first obtaining a license to do so. Tex. Occ.Code. Ann. §§ 1702.101, 1702.104 (Vernon 2004 & Supp. 2008). Because the court cannot, at this stage of the case, determine whether the PSA's licensing requirements apply to ATS (or other companies like it), ATS's motion to dismiss will turn on whether violation of those licensing provisions can serve as an appropriate basis for a claim of negligence per se.

ATS asserts that the PSA was not meant to "prevent people from receiving traffic citations," and thus concludes that the plaintiffs have not experienced the kind of harm that licensing requirements found in § 1702 were intended to prevent. Motion to Dismiss at 24–25. ATS, though, misapplies the threshold questions articulated in *Osti* and recognized by the Texas Supreme Court in *Perry*. While the intent of the Texas Legislature in enacting the PSA may well not have been to prevent traffic ordinance violators from receiving traffic citations, the legislature may have been concerned with preventing those with criminal records or those who are not otherwise licensed under the PSA from accumulating evidence to use against those accused of violating traffic (or other) laws.[6] Thus, at least arguably, the plaintiffs may be within the class of persons § 1702 was meant to protect, and the plaintiffs may have therefore suffered the kind of injury that the PSA's licensing requirement was intended to prevent. Even so, the court concludes that § 1702 does not establish a standard of civil liability from which a negligence per se cause of action can arise.

[11] In *Perry v. S.N.*, the Texas Supreme Court outlined several factors to be considered in determining whether it is appropriate to impose tort liability for violations of a particular statute. 973 S.W.2d at 307–09. Among the *Perry* factors are the following:

> (1) whether the statute is the sole source of any tort duty from the defendant to the plaintiff or merely supplies a standard of conduct for an existing com-

5. The PSA provides that a failure to obtain a required license under the Act is a Class A misdemeanor. Tex. Occ.Code Ann. § 1702.388(b) (Vernon 2004 & Supp. 2008).

6. The licensing provisions contained within the PSA reveal the Texas Legislature's primary aim in enacting the licensing requirements was to prevent those with a criminal background from influencing the criminal investigations process. For example, § 1702.113 requires that an applicant for a private investigations license must not (1) have been convicted of two or more felony offenses; (2) have been convicted of a single felony offense within the past twenty years or a Class A misdemeanor within the past ten years; or, (3) have been charged, at the time of application, with the commission of a Class A misdemeanor or felony offense. Tex. Occ. Code Ann. § 1702.113 (Vernon 2004 & Supp. 2008).

> mon law duty; (2) whether the statute puts the public on notice by clearly defining the required conduct; (3) whether the statute would impose liability without fault; (4) whether negligence per se would result in ruinous damages disproportionate to the seriousness of the statutory violation, particularly if the liability would fall on a broad and wide range of collateral wrongdoers; and (5) whether the plaintiff's injury is a direct or indirect result of the violation of the statute.

Id. at 309.

> These factors are not necessarily exclusive, nor is the issue properly resolved by merely counting how many factors lean each way. Rather, we set out these considerations as guides to assist a court in answering the ultimate question of whether imposing tort liability for violations of a criminal statute is fair, workable, and wise.

Id. at 306. Accordingly, the court will consider the *Perry* factors in turn.

[12] The first factor centers on whether the statute at issue is the sole source of any tort duty owed by the defendant to the plaintiff or whether the statute instead "merely supplies a standard of conduct for an existing common law duty[.]" *Id.* at 309. As noted in *Perry*, in most cases where a negligence per se cause of action will be found to apply, the defendant already owed the plaintiff a preexisting common law duty, and the "statute's role is merely to define more precisely what conduct breaches that duty." *Id.* at 306. ATS asserts, and the court agrees, that there is no preexisting common law duty that would require ATS to obtain a private investigations license before it installed red-light cameras for municipalities. Attaching a negligence per se claim to the licensing requirements of the PSA, then, would doubtless "have an extreme effect upon the common law of negligence [because] it allows a cause of action where the common law does not." *Id.* (internal quotations omitted). This factor thus weighs against allowing the plaintiffs' negligence per se claim.

The fourth *Perry* factor requires the court to consider whether permitting the plaintiffs' negligence per se claim would impose ruinous damages disproportionate to the seriousness of the statutory violation. *See id.* at 308. The plaintiffs seek a three-million dollar damage award based upon ATS's failure to obtain a $350 license. *See* Tex. Occ.Code Ann. § 1702.062(a) (Vernon 2004 & Supp. 2008). Notwithstanding the court's hesitation that the licensing requirement of § 1702.101 (*see* Section II.B.1, *supra*) even applies to ATS, there can be no question that the damages sought by the plaintiffs are grossly disproportionate to the seriousness of violating the Act's licensing requirement. Thus, this marked disproportionality likewise counsels against the imputation of a negligence per se claim in connection with a failure to obtain a private investigations license.

The fifth *Perry* factor centers on whether the plaintiffs' injuries result directly or indirectly from the violation of the statute. *Perry*, 973 S.W.2d at 308. Here, the plaintiffs' injuries—receiving traffic citations for disobeying traffic laws—are only indirectly related to ATS's alleged violation of the licensing statute. That is, whether or not ATS was properly licensed under § 1702.101 has little, if any, bearing on the plaintiffs' compliance with the traffic laws. Although, as noted in section II.A above, Texas law affords criminal defendants the right to exclude improperly obtained evidence against them, ATS's failure to obtain a private investigations license—if one is even required—cannot be said to be the direct cause of the plaintiffs' traffic viola-

tions. Although ATS's collection of the photographic evidence without a license may have played a part in the ultimate issuance of traffic citations to the plaintiffs, the causal connection is indirect at best, and thus this factor also counsels against attaching a negligence per se cause of action to the PSA's licensing requirement.

The second and third *Perry* factors, which concern whether the statute puts the public on notice by clearly defining the required conduct, and whether the statute would impose liability without fault, are less relevant to the case at hand. *See* 973 S.W.2d at 309. Consequently, these two factors do not add much in the way of illumination in the instant case. In light of the persuasive force of the other three factors, the court finds that, on balance, the *Perry* analysis weighs against an application of negligence per se to the PSA's licensing requirement.

Beyond *Perry*, other considerations likewise counsel against a negligence per se application in this case. For example, courts will also consider legislative intent in determining whether violation of a penal statute gives rise to a concomitant civil cause of action. *Reeder v. Daniel*, 61 S.W.3d 359, 362 (Tex.2001) (noting that legislative intent bears on the negligence per se analysis); see also *Smith v. Merritt*, 940 S.W.2d 602, 607–08 (Tex.1997) (noting same). The PSA already provides a comprehensive remedial scheme for violations of the Act's provisions. For example, the PSA requires those who violate the licensing provisions of § 1702.101 (including those who contract with a person who is required to hold a license) to pay to the *state* a civil penalty of up to $10,000 per violation. Tex. Occ.Code Ann. § 1702.381(a), (b) (Vernon 2004 & Supp. 2008). Moreover, the PSA requires specifically that "an attorney for the department, the attorney general's office, or any criminal prosecutor in [Texas]" are the only persons authorized to bring a civil suit in the event one of the Act's provisions is violated. *Id.* § 1702.383. The Act itself also includes a detailed complaint-filing scheme that allows consumers and security service recipients to file written complaints, which the Board will then investigate and adjudicate. *Id.* at §§ 1702.082–084. Because the PSA provides this elaborate consumer complaint scheme, and because the Act also provides that only government lawyers can bring civil actions for violations of the Act's provisions, the court is persuaded that the Texas Legislature did not intend for individuals to redress alleged violations of the PSA through private suit. Accordingly, an examination of legislative intent likewise counsels against allowing a negligence per se claim to attach to a violation of the PSA's licensing requirements.

The plaintiffs point the court to *Missouri Pacific Railroad Company v. American Statesman*, 552 S.W.2d 99 (Tex.1977), in support of their argument that a negligence per se cause of action should attach to a violation of the PSA's licensing requirements. Complaint ¶ 18. In that case, a newspaper publishing company sued a railroad company for damages resulting from a railroad car's collision with the publishing company's steel scaffolding. *Missouri Pacific Railroad*, 552 S.W.2d at 101. The publishing company built the scaffolding with less clearance from the railroad track than was required by law. *Id.* The Texas Supreme Court found that violation of the statute that contained the track clearance requirements constituted negligence per se, and the publishing company was consequently contributorily negligent for the railroad car's collision with the publisher's scaffolding. *Id.* at 103. Texas Supreme Court jurisprudence since *Missouri Pacific Railroad*, however, has further illuminated and refined the negli-

gence per se doctrine. See *Perry*, 973 S.W.2d at 304 (noting that the court will not apply the doctrine of negligence per se if the statute at issue does not provide "an appropriate basis for civil liability"). The court in *Perry* was careful to note that whether a violation of a legislative enactment or regulation is adopted into tort law is a matter of judicial discretion. *Id.* at 304 n. 4 (citing *Southern Pacific Company v. Castro*, 493 S.W.2d 491, 497 (Tex.1973), and Restatement (Second) of Torts § 288B (1965)). Thus, it is the view of this court that *Missouri Pacific*, standing on its own, is not controlling in this case.

[13] Finally, the court notes that even if a negligence per se cause of action were found to attach to a violation of § 1702.101, the plaintiffs' claims would nonetheless fail as a result of the Texas economic loss rule. See *Jim Walter Homes, Inc. v. Reed*, 711 S.W.2d 617, 618 (Tex.1986). This rule provides that "to be entitled to damages for negligence, a party must plead and prove something more than mere economic harm." *Blanche v. First Nationwide Mortgage Corporation*, 74 S.W.3d 444, 453 (Tex.App.-Dallas 2002, no pet.). More specifically, "a party must plead and prove either a personal injury or property damage as contrasted to mere economic harm." *Express One International, Inc. v. Steinbeck*, 53 S.W.3d 895, 899 (Tex.App.-Dallas 2001, no pet.). Here, the plaintiffs have not alleged any personal injury or property damages. The plaintiffs allege only economic damages consisting of individual $75 fines assessed against them for running red lights, attorneys' fees for prosecuting the suit, and punitive damages. *See* Complaint ¶ 19. Because plaintiffs allege only economic damages for their negligence claims, those claims would be dismissed under the Texas economic loss rule even if such claims were viable.

On the whole, the court finds that, in the instant case, the application of a negligence per se cause of action to the PSA's licensing requirements would be inconsistent with both Texas negligence per se jurisprudence and the Texas Legislature's apparent intent in enacting the statute. Because it would be inappropriate to impose tort liability for a violation of § 1702.101, the court finds that the plaintiffs have not stated a claim upon which relief can be granted, and thus plaintiffs' negligence per se claims are dismissed.

C. *Injunctive Relief*

The plaintiffs urge the court to impose a permanent injunction prohibiting ATS from acting as a private investigative agency without the appropriate license. Complaint ¶¶ 20–22. ATS argues that the PSA does not permit a private cause of action for injunctive relief. Motion to Dismiss at 14–16. The court agrees.

[14] The PSA provides injunctive relief for violations of its provisions. Tex. Occ. Code Ann. § 1702.382 (Vernon 2004 & Supp. 2008). This provision, however, expressly limits the class of individuals who can bring an action for an injunction to the following: "[a]n attorney for the department, the attorney general's office, or any criminal prosecutor in this state." *Id.* Thus, the injunctive relief plaintiffs seek for alleged violations of the Act is unavailable to them, and the court therefore finds that the PSA does not create a private cause of action for injunctive relief in this regard.

The plaintiffs are not without recourse, however. They have at their disposal the administrative remedies provided by the very statute on which they rely in making their claim against ATS, *i.e.*, the complaint scheme provided by §§ 1702.082–084. Under this scheme, the plaintiffs are free to make a complaint to the Board, and the Board will then undertake an investigation

and adjudicate the complaint. *See id.* § 1702.082 (Vernon 2004). Because the plaintiffs have failed to establish that the PSA provides a private cause of action for injunctive relief, this claim must also be dismissed.

III. *CONCLUSION*

For the reasons discussed herein, ATS's motion to dismiss the plaintiffs' claims pursuant to FED. R. CIV. P. 12(b)(6) is **GRANTED.**

SO ORDERED.

Kurby DECKER

v.

Chequita DUNBAR, et al.

Civil Action No. 5:06cv210.

United States District Court,
E.D. Texas,
Texarkana Division.

Sept. 29, 2008.

Background: Inmate filed pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. Officials moved for summary judgment.

Holdings: The District Court, David Folsom, J., adopting recommendation of Caroline M. Craven, United States Magistrate Judge, held that:

(1) officials' conduct in delaying inmate's use of restroom did not amount to deliberate indifference in violation of Fourteenth Amendment, and

(2) inmate failed to establish actual injury in alleging he was denied access to court.

Motion granted.

1. Constitutional Law ⇐4823

Prisons ⇐192

Prison officials' conduct in delaying inmate's use of restroom for 30 minutes did not amount to deliberate indifference to his medical needs in violation of Fourteenth Amendment; delay in taking inmate to restroom was caused by need to conduct prisoner count, and inmate failed to demonstrate that he suffered any injury as direct result of delay. U.S.C.A. Const. Amend. 14.

2. Prisons ⇐156

Sentencing and Punishment ⇐1536

Prison officials' placement of inmate in holding cell for 90 minutes on day that outside temperature reached 95 degrees did not amount to cruel and unusual punishment in violation of Eighth Amendment; even assuming holding cell was extremely hot, 90 minutes was not excessive period of time rising to level of constitutional violation. U.S.C.A. Const.Amend. 8.

3. Constitutional Law ⇐2325

Prisons ⇐265

Inmate failed to demonstrate that his alleged lack of access to prison's law library resulted in dismissal of his multiple previously filed criminal appeals and civil cases, and thus inmate failed to establish actual injury required to prevail on claim that he was denied access to court.

4. Prisons ⇐260, 265

Inmates have a right of access to legal materials, and prison officials cannot deny inmates access to court.

TAB 6

Slip Copy, 2009 WL 2958370 (N.D.Tex.)
(Cite as: 2009 WL 2958370 (N.D.Tex.))

Only the Westlaw citation is currently available.

United States District Court,
N.D. Texas,
Dallas Division.
Sally VERRANDO, on Behalf of Themselves and Others Similarly Situated, et al., Plaintiffs,
v.
ACS STATE AND LOCAL SOLUTIONS, INC. d/b/a LDC Collection Systems, Defendant.
Civil Action No. 3:08-CV-2241-G.

Sept. 15, 2009.

Lloyd E. Ward, Lloyd Ward PC, Dallas, TX, for Plaintiffs.

Mike McKool, Jr., Lewis T. Leclair, Scott R. Jacobs, Anthony Matthew Garza, McKool Smith PC, John Taylor Willett, Kevin A. Kinnan, Affiliated Computer Services Inc., Dallas, TX, for Defendant.

MEMORANDUM OPINION AND ORDER

A. JOE FISH, Senior District Judge.

*1 Before the court is the motion of the defendant, ACS State and Local Solutions, Inc., d/b/a/ LDC Collection Systems ("ACS"), to dismiss the plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. For the reasons set forth below, the motion is granted.

I. *BACKGROUND*

On December 19, 2008, Sally Verrando, Stephen Ochs, and James Sigler (collectively, "plaintiffs"), filed this case against ACS on behalf of themselves and others similarly situated, alleging that their suit should be certified as a class action. Original Complaint ("Complaint") ¶ 13.

The plaintiffs' claims arise out of a "Notice of Violation" for "Running a Red Light" each received in violation of the City of Dallas, Texas's Code of Ordinances, Article XIX, Section 28.207. Complaint ¶ 9. Each of the plaintiffs individually received such a "Notice of Violation" on the following dates: Sally Verrando on or about November 12, 2008; Stephen Ochs on or about November 20, 2008; and James Sigler on or about January 23, 2008. *Id.*

Plaintiffs aver that ACS is the party that sold red light cameras to the City of Dallas. *Id.* ¶ 12. Presumably, the City of Dallas issued violations to the plaintiffs on the basis of photographs taken by these red light cameras operated by ACS. *Id.* To engage in such an enterprise, the plaintiffs allege, ACS is required to possess a license under Texas Occupations Code 1702.101, *et seq.*, which ACS allegedly does not have. *Id.* ¶¶ 5, 11, 12.

The plaintiffs allege negligence *per se* based on violations by ACS of the Texas Occupations Code, § 1702.101, *et seq.* (Vernon 2004), and Texas Transportation Code, § 707, *et seq.* (Vernon 2004). Complaint ¶¶ 17-23. Texas Occupations Code § 1702.101 states that a person may not act as an investigations company unless he or she holds a license. Under this statue, a person (or company) acts as an investigations company if he/she/it "engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigations committee." *Id.* § 1702.104(a)(2). Texas Transportation Code, § 707.001, *et seq.*, became effective on September 1, 2007, as a means for establishing the procedure by which local entities could use cameras at stop lights to photograph and cite drivers who illegally run through red lights. Complaint ¶ 10. This includes the means by which a municipality can contract for certain duties to be performed by a vendor. *Id.* ¶ 21. The plaintiffs allege that ACS has been reporting non-payment of citations to the credit bureau, resulting in a violation of the statute, and is negligence *per se*. *Id.* ¶¶ 22-23.

ACS moves to dismiss the plaintiffs' claims against it on the grounds that (1) the plaintiffs lack standing to pursue their negligence *per se* claims under the Texas Occupations Code, and (2) the Texas Transportation Code does not create a duty actionable in tort.

II. *ANALYSIS*

A. *Standing Requirement*

***2** Article III of the United States Constitution limits federal courts' jurisdiction to "cases" and "controversies." U.S. CONST. ART. III § 2. Standing-*i.e.,* the need to demonstrate that the plaintiff has a direct, personal stake in the outcome of the suit-is an "essential and unchanging part" of this case-or-controversy requirement. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). "The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of [the jurisdictional] doctrines." *United States v. Hays,* 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995) (quoting *FW/PBS, Inc. v. Dallas,* 493 U.S. 215, 230-231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990)) (internal quotation marks omitted); see also *Sommers Drug Stores Company Employment Profit Sharing Trust v. Corrigan,* 883 F.2d 345, 348 (5th Cir.1989) ("Standing, since it goes to the very power of the court to act, must exist at all stages of the proceeding, and not merely when the action is initiated or during an initial appeal.") (quoting *Safir v. Dole,* 718 F.2d 475, 481 (D.C.Cir.1983), *cert. denied,* 476 U.S. 1206 (1984)); *University of South Alabama v. American Tobacco Company,* 168 F.3d 405, 410 (11th Cir.1999) (noting that "it is well settled that a federal court is obligated to inquire into subject matter jurisdiction *sua sponte* whenever it may be lacking.").

As the Supreme Court explained in *Lujan,* the "irreducible constitutional minimum of standing" has three elements:

> First, the plaintiff[s] must have suffered an "injury in fact"-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan, 504 U.S. at 560 (internal citations and footnote omitted).

Lack of standing is a defect in subject matter jurisdiction. See *Haase v. Sessions,* 835 F.2d 902, 906 (D.C.Cir.1987) (citing *Bender v. Williamsport Area School District,* 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501(1986)); see also *Corrigan,* 883 F.2d at 348 ("standing is essential to the exercise of jurisdiction, and ... lack of standing can be raised at any time by a party or by the court.") (citing *United States v. One 18th Century Colombian Monstrance,* 797 F.2d 1370, 1374 (5th Cir.1986), *cert. denied,* 481 U.S. 1014, 107 S.Ct. 1889, 95 L.Ed.2d 496 (1987)).

Federal district courts have the unique power to make factual findings which are decisive of subject matter jurisdiction. See *Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.) (citing, among other authorities, *Land v. Dollar,* 330 U.S. 731, 735 n. 4, 67 S.Ct. 1009, 91 L.Ed. 1209 (1947)), *cert. denied,* 454 U.S. 897 (1981). The district court has the power to dismiss for lack of subject matter jurisdiction-and thus for lack of standing-on any one of three separate bases: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Williamson,* 645 F.2d at

413; *Robinson v. TCI/US West Communications Inc.,* 117 F.3d 900, 904 (5th Cir.1997); see also *Haase,* 835 F.2d at 907 (noting that, to the extent the assessment of a plaintiff's standing turns on factual evidence, a court may consider all matters developed in the record at the time of its decision).

*3 Moreover, while the burden is on the party seeking to invoke the federal court's subject matter jurisdiction to establish the requisite standing requirements, that burden need be met only by a preponderance of the evidence. See *Hartford Insurance Group v. Lou-Con Inc.,* 293 F.3d 908, 910 (5th Cir.2002).

Here, ACS correctly states that the plaintiffs lack standing because they cannot show the invasion of a legally protected right, nor can the plaintiffs demonstrate a causal connection between ACS's supposed violation of the statute and the plaintiffs' injury. Brief in Support of Defendant's Motion to Dismiss ("Motion") 5-6. The plaintiffs do not definitively state a right which they believe has been invaded. It seems clear, however, that the injury they have suffered, *i.e.,* the civil fine paid, occurred due to the fact that they each in turn failed to stop at a red light and thus were captured on a camera and fined. The plaintiffs do not contest the accuracy of the camera, nor the unlawfulness of their conduct, but only the need to pay a fine based on the evidence collected by ACS and reported to the City of Dallas. "However, [p]laintiffs do not have a legally protected right to engage in illegal conduct and be free from the consequences of that activity." *Bell v. Redflex Traffic Systems, Inc.,* Number 4:08-CV-444-MHS-DDB, at 5 (E.D.Tex. March 25, 2009) (unpublished opinion) (Schneider, J.), *attached to* Appendix to Reply Brief in Support of Defendant's Motion to Dismiss at A214.

> "It is not enough to establish standing that an identifiable interest has been injured. The injured interest must be one that the courts will recognize for standing purposes ... [For example,] [i]f customs officials were to institute a new and rigorous policy for inspecting packages brought in from other countries, standing would readily be recognized for plaintiff who asserted an interest in personal privacy. Standing probably would be recognized for a business firm that asserted a commercial injury arising from increased delay or expense. Standing would not be recognized for a smuggler who asserted that his drug traffic was disrupted. Although the smuggler may have been injured in fact, and the inspection procedures might indeed be unlawful, the asserted interest is not one the courts will protect."

WRIGHT & MILLER, 13A FED. PRAC. & PROC. § 3531.4 (West 2008). Similarly, in the instant case, the plaintiffs are attempting to contest their civil fines for an illegal action of running a red light by stating that the investigation procedure was not lawful under the Texas Occupations Code.

In their response brief, the plaintiffs contend that another injury they have suffered is the use of evidence secured by an unlicensed company in the issuing of their civil fines. Response to Motion to Dismiss filed by Defendant ACS State and Local Solutions Inc., d/b/a LDC Collection Systems at 2. They contend that the gathering of such information is a violation of their right to privacy. *Id.* However, "the courts do not concern themselves with the method by which a party to a civil suit secures evidence pertinent and material to the issues involved, and which he adduces in support of his contention, and hence evidence which is otherwise admissible may not be excluded because it has been illegally and wrongfully obtained." *Allison v. American Surety Company of New York,* 248 S.W. 829, 832 (Tex.Civ.App.-Galveston 1923, no writ). "Evidence illegally obtained is admissible in civil cases under the common-law rule." *State v. Taylor,* 721 S.W.2d 541, 551 (Tex.App.-Tyler 1986, writ ref'd n.r.e.) (appraisal conducted by an unlicensed real estate broker was admissible in a condemnation case).

*4 Further, the plaintiffs have failed to allege any facts that show that the plaintiffs' privacy interests were violated. *Billings v. Atkinson,* 489 S.W.2d

858, 860 (Tex.1973) (defining privacy interests); see also *Webb v. Glenbrook Owners Association, Inc.*, --- S.W.3d ----, 2009 WL 2396463, *9 (Tex.App.-Dallas, August 6, 2009) (elements of a claim of invasion of privacy); see also *Bell,* Number 4:08-CV-444-MHS-DDB, at 4 ("Plaintiffs do not have a protected privacy interest while sitting in their vehicles in a public intersection"). Moreover, the facts alleged by the plaintiff do not fit under any of the categories of the tort "invasion of privacy" outlined in *Industrial Foundation of the South v. Texas Industrial Accident Board,* 540 S.W.2d 668 (Tex.1976), *cert. denied,* 430 U.S. 931, 97 S.Ct. 1550, 51 L.Ed.2d 774 (1977). Those categories include: "(1) Intrusion upon the plaintiff's seclusion or solitude, or into his private affairs. (2) Public disclosure of embarrassing private facts about the plaintiff. (3) Publicity which places the plaintiff in a false light in the public eye. (4) Appropriation, for the defendant's advantage, of the plaintiff's name or likeness." *Industrial Foundation,* 540 S.W.2d at 682-83. The plaintiffs also attempt to draw on the comparison of the federal wiretap statutes discussed in *Collins v. Collins,* 904 S.W.2d 792 (Tex.App.-Houston [1st Dist.] 1995, writ denied). However, "the wiretap statutes involve intrusion into a traditionally recognized zone of privacy" within private homes, whereas a public intersection does not fit within this category. *Bell,* Number 4:08-CV-444-MHS-DDB, at 7; see also *Hudson v. State,* 588 S.W.2d 348, 351-52 (Tex.Crim.App.1979) (holding it was not a violation of privacy to photograph the exterior of a car parked in a public parking lot).

Moreover, the plaintiffs have not actually alleged that they were the persons driving the car at the time of the photograph, and "Texas does not permit a plaintiff to recover for injury caused by the invasion of another's privacy." *Wood v. Hustler Magazine, Inc.,* 736 F.2d 1084, 1093 (5th Cir.1984) , *cert. denied,* 469 U.S. 1107, 105 S.Ct. 783, 83 L.Ed.2d 777 (1985).

The plaintiffs also have failed to show a causal connection between the alleged violation of the Texas Occupation Code by ACS and an injury to them. See *Lujan,* 504 U.S. at 560 ("[T]here must be a causal connection between the injury and the conduct complained ofthe injury has to be "fairly ... trace [able] to the challenged action of the defendant"). The plaintiffs have not alleged that the accuracy of the red light cameras was flawed or that the pictures taken were not accurate. There are no facts in the plaintiffs' complaint to support the idea that ACS's failure to acquire an investigation license was the cause-in-fact of the injury of receiving the civil fines. Even if the court assumes *arguendo* that ACS had possessed the license that is allegedly required, there would still be no change in the outcome of the civil fines paid by the plaintiffs. Accordingly, the plaintiffs' negligence *per se* claim based on Texas Occupations Code § 1702.101, *et seq.,* is dismissed due to lack of standing by the plaintiffs.

B. *Rule 12(b)(6) Motion to Dismiss*

1. *The Rule 12(b)(6) Standard*

***5** The defendant moves to dismiss this case pursuant to Federal Rule of Civil Procedure 12(b)(6). "To survive a Rule 12(b)(6) motion, the plaintiff must plead 'enough facts to state a claim to relief that is plausible on its face.' " *In re Katrina Canal Breaches Litigation,* 495 F.3d 191, 205 (5th Cir.2007) (quoting *Bell Atlantic Corporation v. Twombly,* 550 U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007)), *cert. denied,* --- U.S. ----, 128 S.Ct. 1230, 170 L.Ed.2d 63 (2008). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of [her] entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly,* 127 S.Ct. At 1964-65 (citations, quotation marks, and brackets omitted). "Factual allegations must be

enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Katrina Canal,* 495 F.3d at 205 (quoting *Twombly,* 127 S.Ct. at 1965). "The court accepts all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Id.* (internal quotation marks omitted) (quoting *Martin K. Eby Construction Company v. Dallas Area Rapid Transit,* 369 F.3d 464, 467 (5th Cir.2004)). Even so, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal,* --- U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (May 18, 2009). In other words, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'shown[n]'-'that the pleader is entitled to relief.' " *Id.* at 1950 (quoting FED. RULE CIV. PROC. 8(a)(2)).

2. *Texas Transportation Code*

The plaintiffs fail to state a claim under a theory of negligence *per se* based on Texas Transportation Code, Section 707.001, *et seq.,* because the statute is not applicable to the contract entered into between the City of Dallas and ACS. Based on the legislative history, this code section only applies to contracts entered into on or after September 1, 2007. *See* Acts 2007, 80th Leg., ch. 1149 (S.B.1119), § 9 (Lexis 2007). The contract between the City and ACS which allowed ACS to install and operate red light traffic cameras was signed on October 31, 2006. *See* Appendix to Defendant ASC State & Local Solutions, Inc. d/b/a LDC Collection Systems' Brief in Support of Defendant's Motion to Dismiss at A38; Motion at 16. Thus, this contract is not subject to the terms of Texas Transportation Code, Section 707.003, and the plaintiffs have failed to state any facts in the complaint showing otherwise. Accordingly, ASC's motion to dismiss the plaintiffs' negligence *per se* claim under the Texas Transportation Code is granted.

III. *CONCLUSION*

***6** For the reasons discussed above, the plaintiffs claims on the theory of negligence *per se* based on the Texas Occupations Code, § 1702.101 *et seq.,* and the Texas Transportation Code, § 707.001 *et seq.,* are **DISMISSED.** [FN*]

FN* As noted above, failure of the plaintiffs to establish standing means that the court lacks subject matter jurisdiction. The court may also lack subject matter jurisdiction for another reason. The basis of such jurisdiction alleged by the plaintiffs is diversity of citizenship and an amount in controversy of at least $75,000.00. *See* Complaint ¶ 6. This amount apparently consists of the plaintiffs' "actual damages sustained from the issuance of the ticket, reasonable attorney's fees, and punitive damages in an amount of not less than Three Million Dollars ($3,000,000.00)." *Id.* ¶ 19. However, as pointed out by the defendant, the plaintiffs have not pleaded facts by which, under Texas law, they could recover either punitive damages or attorney's fees. Motion at 20-21. Thus, plaintiffs' damages may consist only of the civil fines they have paid, which appear to fall well short of $75,000.00.

SO ORDERED.

N.D.Tex.,2009.
Verrando v. ACS State and Local Solutions, Inc.
Slip Copy, 2009 WL 2958370 (N.D.Tex.)

END OF DOCUMENT

TAB 7

TEXAS
OCCUPATIONS CODE
CHAPTER 1702

As Amended by the
80th Legislature, Regular Session

PREPARED BY DPS OFFICE OF GENERAL COUNSEL

August 2007

OCCUPATIONS CODE
CHAPTER 1702, PRIVATE SECURITY

SUBCHAPTER A. GENERAL PROVISIONS

§1702.001. SHORT TITLE. This chapter may be cited as the Private Security Act.

§1702.002. DEFINITIONS. In this chapter:

(1) "Alarm system" means:

(A) electronic equipment and devices designed to detect or signal:

(i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or

(ii) the occurrence of a robbery or other emergency;

(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance into the controlled area of a residence or business; or

(C) a television camera or still camera system that:

(i) records or archives images of property or individuals in a public or private area of a residence or business; or

(ii) is monitored by security personnel or services.

(1-a) For purposes of Subdivision (1), the term "alarm system" does not include a telephone entry system, an operator for opening or closing a residential or commercial gate or door, or an accessory used only to activate a gate or door, if the system, operator, or accessory is not connected to an alarm system.

(1-b) "Board" means the Texas Private Security Board.

(2) "Branch office" means an office that is:

(A) identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) at a place other than the principal place of business as shown in commission records.

(3) "Branch office license" means a permit issued by the commission that entitles a person to operate at a branch office as a security services contractor or investigations company.

(4) "Commission" means the Texas Commission on Private Security.

(5) "Commissioned security officer" means a security officer to whom a security officer commission has been issued by the commission.

(5-a) "Department" means the Department of Public Safety of the State of Texas.

(6) "Detection device" means an electronic device used as a part of an alarm system, including a control, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring, or similar device.

(6-a) "Electronic access control device" means an electronic, electrical, or computer-based device, including a telephone entry system, that allows access to a controlled area of a business, but that is not monitored by security personnel or services and does not send a signal to which law enforcement or emergency services respond. The term does not include:

(A) a mechanical device, such as a deadbolt or lock; or

(B) an operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portable transmitter, card-reader, or keypad, if the operator or accessory is used only to activate the gate or door and is not connected to an alarm system.

(7) "Extra job coordinator" means a peace officer who:

(A) is employed full-time by the state or a political subdivision of the state; and

(B) schedules other peace officers to provide guard, patrolman, or watchman services in a private capacity who are:

(i) employed full-time by the state or a political subdivision of the state; and

(ii) not employed by the extra job coordinator.

(8) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(9) "Insurance agent" means:

(A) a person licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791, Government Code.

(10) "Investigations company" means a person who performs the activities described by Section 1702.104.

(11) "Letter of authority" means a permit issued by the commission that entitles the security department of a private business or a political subdivision to employ a commissioned security officer.

(12) "License" means a permit issued by the commission that entitles a person to operate as a security services contractor or investigations company.

(13) "License holder" means a person to whom the commission issues a license.

(14) "Manager" means an officer or supervisor of a corporation or a general partner of a partnership who has the experience required by Section 1702.119 to manage a security services contractor or an investigations company.

(15) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

(16) "Person" includes an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity. Section 311.005(2), Government Code, does not apply to this subdivision.

(17) "Personal protection officer authorization" means a permit issued by the commission that entitles an individual to act as a personal protection officer.

(18) "Private investigator" means an individual who performs one or more services described by Section 1702.104.

(19) "Registrant" means an individual who has registered with the commission under Section 1702.221.

(20) "Registration" means a permit issued by the commission to an individual described by Section 1702.221.

(21) "Security officer commission" means an authorization issued by the commission that entitles a security officer to carry a firearm.

(22) "Security services contractor" means a person who performs the activities described by Section 1702.102.

§1702.003. APPLICATION OF SUNSET ACT. The Texas Commission on Private Security is subject to Chapter 325, Government Code (Texas Sunset Act). Unless

(c) A person whose pocket card has not expired is not eligible to receive from the commission another pocket card in the same classification in which the pocket card is held.

§1702.063. COMMISSION USE OF FINES. The fines collected under this chapter may not be used to administer this chapter.

§1702.0635. RESTRICTIONS ON CERTAIN RULES. The commission may not adopt rules or establish unduly restrictive experience or education requirements that limit a person's ability to be licensed as an electronic access control device company or be registered as an electronic access control device installer.

§1702.064. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

§1702.0645. PAYMENT OF FEES AND FINES. (a) The commission may adopt rules regarding the method of payment of a fee or a fine assessed under this chapter.

(b) Rules adopted under this section may:

(1) authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the commission; and

(2) require the payment of a discount or a reasonable service charge for a credit card payment in addition to the fee or the fine.

§1702.065. POWERS AND DUTIES RELATING TO ALARM SYSTEMS INSTALLERS; CERTIFICATES OF INSTALLATION. (a) The commission may interpret and issue an opinion resolving a question concerning the eligibility of an alarm system installation to comply with Article 5.33A, Insurance Code. A commission interpretation or opinion relating to general conditions or an individual installation is conclusive.

(b) The commission may authorize an alarm systems company to issue a certificate of installation showing that an installation complies with Article 5.33A, Insurance Code. An inspection otherwise required by the Insurance Code is not required if a certificate is issued under this section. The certificate must be furnished to the insurer, and the insurer shall determine whether the person's property is in compliance with Article 5.33A, Insurance Code, taking into consideration the installer's certificate and information from any other investigation the insurer determines to be appropriate.

§1702.066. SERVICE OF PROCESS; SERVICE OF DOCUMENTS ON COMMISSION. Legal process and documents required by law to be served on or filed with the commission must be served on or filed with the director at the designated office of the commission.

§1702.067. COMMISSION RECORDS; EVIDENCE. An official record of the commission or an affidavit by the director as to the content of the record is prima facie evidence of a matter required to be kept by the commission.

§1702.068. APPEAL BOND NOT REQUIRED. The commission is not required to give an appeal bond in any cause arising under this chapter.

§1702.069. ANNUAL REPORT. The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all money received and disbursed by the commission in the preceding fiscal year. The form of the annual report and the reporting time are as provided in the General Appropriations Act.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

§1702.081. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of interest to consumers or recipients of services regulated under this chapter describing the commission's regulatory functions and the procedures by which complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

§1702.082. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for services provided by a person regulated under this chapter.

(b) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(c) The commission shall provide to the person filing the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(d) Unless it would jeopardize an undercover investigation, the commission shall provide to each person who is

a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(e) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

§1702.083. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

§1702.084. PUBLIC ACCESS TO CERTAIN RECORDS OF DISCIPLINARY ACTIONS. (a) The commission shall make available to the public through a toll-free telephone number, Internet website, or other easily accessible medium determined by the commission the following information relating to a disciplinary action taken during the preceding three years regarding a person regulated by the commission:

(1) the identity of the person;

(2) the nature of the complaint that was the basis of the disciplinary action taken against the person; and

(3) the disciplinary action taken by the commission.

(b) In providing the information, the commission shall present the information in an impartial manner, use language that is commonly understood, and, if possible, avoid jargon specific to the security industry.

(c) The commission shall update the information on a monthly basis.

(d) The commission shall maintain the confidentiality of information regarding the identification of a complainant.

§1702.085. CONFIDENTIALITY OF RECORDS.

Records maintained by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a license holder, registrant, or security officer commission holder are confidential and are not subject to mandatory disclosure under Chapter 552, Government Code.

SUBCHAPTER F. LICENSING AND DUTIES OF INVESTIGATIONS COMPANIES AND SECURITY SERVICES CONTRACTORS

§1702.101. INVESTIGATIONS COMPANY LICENSE REQUIRED. Unless the person holds a license as an investigations company, a person may not:

(1) act as an investigations company;

(2) offer to perform the services of an investigations company; or

(3) engage in business activity for which a license is required under this chapter.

§1702.102. SECURITY SERVICES CONTRACTOR LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as a security services contractor, a person may not:

(1) act as an alarm systems company, armored car company, courier company, guard company, guard dog company, locksmith company, or private security consultant company;

(2) offer to perform the services of a company in Subdivision (1); or

(3) engage in business activity for which a license is required under this chapter.

(b) A person licensed only as a security services contractor may not conduct an investigation other than an investigation incidental to the loss, misappropriation, or concealment of property that the person has been engaged to protect.

§1702.1025. ELECTRONIC ACCESS CONTROL DEVICE COMPANY LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as an electronic access control device company, a person may not:

(1) act as an electronic access control device company;

(2) offer to perform the services of an electronic access control device company; or

(3) engage in business activity for which a license is required under this chapter.

(b) A person licensed as an electronic access control device company may not install alarm systems unless otherwise licensed or registered to install alarm systems under this chapter.

§1702.103. CLASSIFICATION AND LIMITATION OF LICENSES. (a) The license classifications are:

(1) Class A: investigations company license, covering operations of an investigations company;

(2) Class B: security services contractor license, covering operations of a security services contractor;

(3) Class C: covering the operations included within Class A and Class B; and

(4) Class D: electronic access control device license, covering operations of an electronic access control device company.

(b) A Class A, B, C, or D license does not authorize the license holder to perform a service for which the license holder has not qualified. A person may not engage in an operation outside the scope of that person's license. The commission shall indicate on the license the services the license holder is authorized to perform. The license holder may not perform a service unless it is indicated on the license.

(c) A license is not assignable unless the assignment is approved in advance by the commission.

(d) The commission shall prescribe by rule the procedure under which a license may be terminated.

§1702.104. INVESTIGATIONS COMPANY. (a) A person acts as an investigations company for the purposes of this chapter if the person:

(1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:

(A) crime or wrongs done or threatened against a state or the United States;

(B) the identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;

(C) the location, disposition, or recovery of lost or stolen property; or

(D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

(2) engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigating committee;

(3) engages in the business of securing, or accepts employment to secure, the electronic tracking of the location of an individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(4) engages in the business of protecting, or accepts employment to protect, an individual from bodily harm through the use of a personal protection officer.

(b) For purposes of Subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

§1702.1045. PRIVATE SECURITY CONSULTING COMPANY. A person acts as a private security consulting company for purposes of this chapter if the person :

(1) consults, advises, trains, or specifies or recommends products, services, methods, or procedures in the security or loss prevention industry;

(2) provides a service described by Subdivision (1) on an independent basis and without being affiliated with a particular service or product; and

(3) meets the experience requirements established by the board.

§1702.105. ALARM SYSTEMS COMPANY. A person acts as an alarm systems company for the purposes of this chapter if the person sells, installs, services, monitors, or responds to an alarm system or detection device.

§1702.1055. ELECTRONIC ACCESS CONTROL DEVICE COMPANY. A person acts as an electronic access control device company for the purposes of this chapter if the person installs or maintains an electronic access control device.

§1702.1056. LOCKSMITH COMPANY. (a) A person acts as a locksmith company for the purposes of this chapter if the person:

(1) sells, installs, services, or maintains mechanical security devices, including deadbolts and locks;

(2) advertises services offered by the company using thH tHUP "GRFksP lth"; RU

(3) lnFQGHs thH tHUP "GRFksP lth" ln thH FRP SDny's name.

(b) This section does not apply to a hotel, as that term is defined by Section 156.001, Tax Code.

§1702.106. ARMORED CAR COMPANY. A person acts as an armored car company for the purposes of this chapter if the person provides secured and protected transportation of valuables, including money, coins, bullion, securities, bonds, or jewelry.

§1702.107. COURIER COMPANY. A person acts as a courier company for purposes of this chapter if the person transports or offers to transport under armed guard an item that requires expeditious delivery, including a document, map, stock, bond, or check.

§1702.108. GUARD COMPANY. A person acts as a guard company for the purposes of this chapter if the person employs an individual described by Section 1702.323(d) or engages in the business of or undertakes to provide a private watchman, guard, or street patrol service on a contractual basis for another person to:

(1) prevent entry, larceny, vandalism, abuse, fire, or trespass on private property;

(2) prevent, observe, or detect unauthorized activity on private property;

(3) control, regulate, or direct the movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to ensure the protection of property;

(4) protect an individual from bodily harm including through the use of a personal protection officer; or

(5) perform a function similar to a function listed in this section.

§1702.109. GUARD DOG COMPANY. A person acts as a guard dog company for the purposes of this chapter if the person places, rents, sells, or trains a dog used to:

(1) protect an individual or property; or

(2) conduct an investigation.

§1702.110. APPLICATION FOR LICENSE. An application for a license under this chapter must be in the form prescribed by the commission and include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification for which the applicant requests qualification;

(5) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer, and director of the applicant, and of the applicant's manager;

(6) if the applicant is an individual, two classifiable sets of fingerprints of the applicant or, if the applicant is an entity other than an individual, of each officer and of each partner or shareholder who owns at least a 25 percent interest in the applicant;

(7) a verified statement of the applicant's experience qualifications in the particular classification in which the applicant is applying;

(8) a report from the Texas Department of Public Safety stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;

(9) the social security number of the individual making the application; and

(10) other information, evidence, statements, or documents required by the commission.

§1702.111. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A license holder, in accordance with Section 1702.129, shall notify the commission in writing of the establishment of a branch office and file in writing with the commission the address of the branch office.

(b) On application by a license holder, the commission shall issue a branch office license.

§1702.112. FORM OF LICENSE. The commission shall prescribe the form of a license, including a branch office license. The license must include:

(c) A person required to testify or to produce a record or document on any matter properly under inquiry by the commission who refuses to testify or to produce the record or document on the ground that the testimony or the production of the record or document would incriminate or tend to incriminate the person is nonetheless required to testify or to produce the record or document. A person who is required to testify or to produce a record or document under this subsection is not subject to indictment or prosecution for a transaction, matter, or thing concerning which the person truthfully testifies or produces evidence.

(d) If a witness refuses to obey a subpoena or to give evidence relevant to proper inquiry by the commission, the commission may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible.

(e) An investigator employed by the commission may take statements under oath in an investigation of a matter covered by this chapter.

§1702.368. NOTIFICATION OF CONVICTION FOR CERTAIN OFFENSES. The Texas Department of Public Safety shall notify the commission and the police department of the municipality and the sheriff's department of the county in which a person licensed, registered, or commissioned under this chapter resides of the conviction of the person for a Class B misdemeanor or equivalent offense or a greater offense.

§1702.369. NO REINSTATEMENT AFTER REVOCATION. A revoked license may not be reinstated.

§1702.370. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Subject to expiration of the license under Section 1702.306, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

§1702.3705. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as provided by Subsection (b), a political subdivision may not offer residential alarm system sales, service, installation, or monitoring unless it has been providing monitoring services to residences within the boundaries of the political subdivision as of September 1, 1999. Any fee charged by the political subdivision may not exceed the cost of the monitoring.

(b) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response of an alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(3) offer monitoring in connection with a criminal investigation; or

(4) offer monitoring to a financial institution, as defined by Section 59.301, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(c) The limitations of Subsection (a) do not apply to a political subdivision in a county with a population of less than 80,000 or in a political subdivision where monitoring is not otherwise provided or available.

§1702.371. CONVICTION OF CERTAIN CRIMES. For purposes of this chapter, a person is considered to be convicted of an offense if a court enters a judgment against the person for committing an offense under the laws of this state, another state, or the United States, including a conviction:

(1) in which a person is placed on and subsequently discharged from community supervision;

(2) that has been set aside or dismissed following the completion of probation; or

(3) for which a person is pardoned, unless the pardon was granted for reasons relating to a wrongful conviction.

SUBCHAPTER P. PENALTIES AND ENFORCEMENT PROVISIONS

§1702.381. CIVIL PENALTY. (a) A person who is not licensed under this chapter, who does not have a license application pending, and who violates this chapter may be assessed a civil penalty to be paid to the state not to exceed $10,000 for each violation.

(b) A person who contracts with or employs a person who is required to hold a license, certificate of registration, or security officer commission under this chapter knowing that the person does not hold the required license, certificate, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter may be assessed a civil penalty to be paid to the state in an amount not to exceed $10,000 for each violation.

(c) A civil penalty under this section may be assessed against a person on proof that the person has received at least 30 days' notice of the requirements of this section.

§1702.382. INJUNCTION. (a) An attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute an action against a person to enjoin a violation by the person of this chapter or an administrative rule.

(b) An injunction action instituted under this section does not require an allegation or proof that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation to sustain an action under this section. A bond is not required for an injunction action instituted under this section.

§1702.383. ACTION FOR CIVIL PENALTY OR INJUNCTION. If a person has violated a provision of this chapter for which a penalty is imposed under Section 1702.381, an attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute a civil suit in a Travis County district court or in a district court in the county in which the violation occurred for injunctive relief under Section 1702.382 or for assessment and recovery of the civil penalty.

§1702.384. FALSIFICATION OF CERTAIN DOCUMENTS; OFFENSE. (a) A person commits an offense if the person knowingly falsifies fingerprints or photographs submitted under Section 1702.110.

(b) An offense under this section is a felony of the third degree.

§1702.385. NEGLECT BY GUARD DOG COMPANY; OFFENSE. (a) A license holder commits an offense if the license holder:

(1) operates a guard dog company; and

(2) fails to provide necessary food, care, or shelter for an animal used by the guard dog company.

(b) An offense under this section is a Class A misdemeanor.

§1702.386. UNAUTHORIZED EMPLOYMENT; OFFENSE. (a) A person commits an offense if the person contracts with or employs a person who is required to hold a license, registration, certificate, or commission under this chapter knowing that the person does not hold the required license, registration, certificate, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

§1702.3863. UNAUTHORIZED CONTRACT WITH BAIL BOND SURETY; OFFENSE. (a) A person commits an offense if the person contracts with or is employed by a bail bond surety as defined by Chapter 1704 to secure the appearance of a person who has violated Section 38.10, Penal Code, unless the person is:

(1) a peace officer;

(2) an individual licensed as a private investigator or the manager of a licensed investigations company; or

(3) a commissioned security officer employed by a licensed guard company.

(b) An offense under Subsection (a) is a state jail felony.

§1702.3867. EXECUTION OF CAPIAS OR ARREST WARRANT; OFFENSE. (a) A private investigator executing a capias or an arrest warrant on behalf of a bail bond surety may not:

(1) enter a residence without the consent of the occupants;

(2) execute the capias or warrant without written authorization from the surety;

(3) wear, carry, or display any uniform, badge, shield, or other insignia or emblem that implies that the private investigator is an employee, officer, or agent of the federal government, the state, or a political subdivision of the state; or

(4) notwithstanding Section 9.51, Penal Code, use deadly force.

(b) k otwithstanding Subsection (a)(3), a private investigator may display identification that indicates that the person is acting on behalf of a bail bond surety.

(c) A private investigator executing a capias or an arrest warrant on behalf of a bail bond surety shall immediately take the person arrested to:

(1) if the arrest is made in the county in which the capias or warrant was issued:

(A) the county jail for that county if:

(i) the offense is a Class A or Class B misdemeanor or a felony; or

(ii) the offense is a Class C misdemeanor and the capias or warrant was issued by a magistrate of that county; or

(B) the municipal jail for the appropriate municipality if the offense is a Class C misdemeanor and the capias or warrant was issued by a magistrate of the municipality; or

(2) if the arrest is made in a county other than the county in which the capias or warrant was issued, the county jail for the county in which the arrest is made.

(d) A person commits an offense if the person violates this section. An offense under this section is a state jail felony.

§1702.387. FAILURE TO SURRENDER CERTAIN DOCUMENTS; OFFENSE. (a) A person commits an offense if the person fails to surrender or immediately return to the commission the person's registration, commission, pocket card, or other identification issued to the person by the commission on notification of a summary suspension or summary denial under Section 1702.364.

(b) An offense under this section is a Class A misdemeanor.

§1702.3875. IMPERSONATING SECURITY OFFICER; OFFENSE. (a) A person commits an offense if the person:

(1) impersonates a commissioned or noncommissioned security officer with the intent to induce another to submit to the person's pretended authority or to rely on the person's pretended acts of a security officer; or

(2) knowingly purports to exercise any function that requires registration as a noncommissioned security officer or a security officer commission.

(b) An offense under this section is a Class A misdemeanor.

§1702.388. VIOLATION OF CHAPTER; OFFENSE. (a) A person commits an offense if the person violates a provision of this chapter for which a specific criminal penalty is not prescribed.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter of failing to hold a license, registration, certificate, or commission that the person is required to hold under this chapter.

§1702.389. VENUE. An offense under this chapter may be prosecuted in Travis County or in the county in which the offense occurred.

SUBCHAPTER Q. ADMINISTRATIVE PENALTY

§1702.401. IMPOSITION OF PENALTY. In addition to any other disciplinary action taken by the department, and subject to the board's final order in a hearing under this subchapter, the department may impose an administrative penalty on a person licensed, commissioned, or registered under this chapter who violates this chapter or a rule or order adopted under this chapter.

§1702.402. AMOUNT OF PENALTY. (a) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of each separate violation may not exceed $500.

(b) The amount of a violation shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

TAB 8

authority for a civil penalty if, while facing only a steady red signal displayed by an electrically operated traffic-control signal located in the local authority, the vehicle is operated in violation of the instructions of that traffic-control signal, as specified by Section 544.007(d).

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

§ 707.0021. Imposition of Civil Penalty on Owner of Authorized Emergency Vehicle

(a) In this section, "authorized emergency vehicle" has the meaning assigned by Section 541.201.

(b) A local authority may not impose or attempt to impose a civil penalty under this chapter on the owner of an authorized emergency vehicle.

(c) This section does not prohibit an employer from taking disciplinary action against an employee who as the operator of an authorized emergency vehicle operated the vehicle in violation of a rule or policy of the employer.

Added by Acts 2009, 81st Leg., ch. 502, § 1, eff. Sept. 1, 2009.

§ 707.003. Installation and Operation of Photographic Traffic Signal Enforcement System

(a) A local authority that implements a photographic traffic signal enforcement system under this chapter may:

(1) contract for the administration and enforcement of the system; and

(2) install and operate the system or contract for the installation or operation of the system.

(b) A local authority that contracts for the administration and enforcement of a photographic traffic signal enforcement system may not agree to pay the contractor a specified percentage of, or dollar amount from, each civil penalty collected.

(c) Before installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall conduct a traffic engineering study of the approach to determine whether, in addition to or as an alternative to the system, a design change to the approach or a change in the signalization of the intersection is likely to reduce the number of red light violations at the intersection.

(d) An intersection approach must be selected for the installation of a photographic traffic signal enforcement system based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the intersection, and similar traffic engineering and safety criteria, without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located.

(e) A local authority shall report results of the traffic engineering study required by Subsection (c) to a citizen advisory committee consisting of one person appointed by each member of the governing body of the local authority. The committee shall advise the local authority on the installation and operation of a photographic traffic signal enforcement system established under this chapter.

(f) A local authority may not impose a civil penalty under this chapter on the owner of a motor vehicle if the local authority violates Subsection (b) or (c).

(g) The local authority shall install signs along each roadway that leads to an intersection at which a photographic traffic signal enforcement system is in active use. The signs must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Section 544.001, be easily readable to any operator approaching the intersection, and clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty.

(h) A local authority or the person with which the local authority contracts for the administration and enforcement of a photographic traffic signal enforcement system may not provide information about a civil penalty imposed under this chapter to a credit bureau, as defined by Section 392.001, Finance Code.

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

Historical and Statutory Notes

2007 Legislation

Section 9 of Acts 2007, 80th Leg., ch. 1149 provides:

"Section 707.003, Transportation Code, as added by this Act, applies only to a contract entered into on or after the effective date [Sept. 1, 2007] of this Act."

§ 707.004. Report of Accidents

(a) In this section, "department" means the Texas Department of Transportation.

(b) Before installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall compile a written report of the number and type of traffic accidents that have occurred at the intersection for a period of at least 18 months before the date of the report.

(c) Not later than six months after the date of the installation of the photographic traffic signal enforcement system at the intersection, the local authority shall provide the department a copy of the report required by Subsection (b).

(d) After installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall monitor and annually report to the department the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

(e) The report must be in writing in the form prescribed by the department.

(f) Not later than December 1 of each year, the department shall publish the information submitted by a local authority under Subsection (d).

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

Historical and Statutory Notes

2007 Legislation

Section 8 of Acts 2007, 80th Leg., ch. 1149 provides:

"The reporting and publication requirements imposed by Section 707.004, Transportation Code, as added by this Act, apply only to a year beginning on or after January 1, 2008."

§ 707.005. Minimum Change Interval

At an intersection at which a photographic traffic monitoring system is in use, the minimum change interval for a steady yellow signal must be established in accordance with the Texas Manual on Uniform Traffic Control Devices.

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

§ 707.006. General Surveillance Prohibited; Offense

(a) A local authority shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.

(b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

§ 707.007. Amount of Civil Penalty; Late Payment Penalty

If a local authority enacts an ordinance to enforce compliance with the instructions of a traffic-control signal by the imposition of a civil or administrative penalty, the amount of:

(1) the civil or administrative penalty may not exceed $75; and

(2) a late payment penalty may not exceed $25.

Added by Acts 2007, 80th Leg., ch. 1149, § 1, eff. Sept. 1, 2007.

TAB 9

VERNON'S TEXAS SESSION LAW SERVICE 2007
Eighteenth Legislature, 2007 Regular Session

Additions are indicated by Text; deletions by ~~Text~~. Changes in tables are made but not highlighted.

CHAPTER 1149
S.B. No. 1119

IMPLEMENTATION OF A PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM; PROVIDING FOR THE IMPOSITION OF CIVIL PENALTIES AND TO THE USE OF THE MONEY COLLECTED TO HELP FUND TRAUMA FACILITIES AND EMERGENCY MEDICAL SERVICES; PROVIDING A CRIMINAL PENALTY

AN ACT

relating to the implementation of a photographic traffic signal enforcement system; providing for the imposition of civil penalties and to the use of the money collected to help fund trauma facilities and emergency medical services; providing a criminal penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subtitle I, Title 7, Transportation Code, is amended by adding Chapter 707 to read as follows:

CHAPTER 707. PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM
<< TX TRANSP § 707.001 >>

Sec. 707.001. DEFINITIONS. In this chapter:

(1) "Local authority" has the meaning assigned by Section 541.002.

(2) "Owner of a motor vehicle" means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.

(3) "Photographic traffic signal enforcement system" means a system that:

(A) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal; and

(B) is capable of producing at least two recorded images that depict the li-

cense plate attached to the front or the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

(4) "Recorded image" means a photographic or digital image that depicts the front or the rear of a motor vehicle.

(5) "Traffic-control signal" has the meaning assigned by Section 541.304.

<< TX TRANSP § 707.002 >>.

Sec. 707.002. AUTHORITY TO PROVIDE FOR CIVIL PENALTY. The governing body of a local authority by ordinance may implement a photographic traffic signal enforcement system and provide that the owner of a motor vehicle is liable to the local authority for a civil penalty if, while facing only a steady red signal displayed by an electrically operated traffic-control signal located in the local authority, the vehicle is operated in violation of the instructions of that traffic-control signal, as specified by Section 544.007(d).

<< TX TRANSP § 707.003 >>

Sec. 707.003. INSTALLATION AND OPERATION OF PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM. (a) A local authority that implements a photographic traffic signal enforcement system under this chapter may:

(1) contract for the administration and enforcement of the system; and

(2) install and operate the system or contract for the installation or operation of the system.

(b) A local authority that contracts for the administration and enforcement of a photographic traffic signal enforcement system may not agree to pay the contractor a specified percentage of, or dollar amount from, each civil penalty collected.

(c) Before installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall conduct a traffic engineering study of the approach to determine whether, in addition to or as an alternative to the system, a design change to the approach or a change in the signalization of the intersection is likely to reduce the number of red light violations at the intersection.

(d) An intersection approach must be selected for the installation of a photographic traffic signal enforcement system based on traffic volume, the history of accidents at the approach, the number or frequency of red light violations at the intersection, and similar traffic engineering and safety criteria, without regard to the ethnic or socioeconomic characteristics of the area in which the approach is located.

(e) A local authority shall report results of the traffic engineering study required by Subsection (c) to a citizen advisory committee consisting of one person appointed by each member of the governing body of the local authority. The committee shall advise the local authority on the installation and operation of a photographic traffic signal enforcement system established under this chapter.

(f) A local authority may not impose a civil penalty under this chapter on the owner of a motor vehicle if the local authority violates Subsection (b) or (c).

(g) The local authority shall install signs along each roadway that leads to an intersection at which a photographic traffic signal enforcement system is in active use. The signs must be at least 100 feet from the intersection or located according to standards established in the manual adopted by the Texas Transportation Commission under Section 544.001, be easily readable to any operator approaching the intersection, and clearly indicate the presence of a photographic monitoring system that records violations that may result in the issuance of a notice of violation and the imposition of a monetary penalty.

(h) A local authority or the person with which the local authority contracts for the administration and enforcement of a photographic traffic signal enforcement system may not provide information about a civil penalty imposed under this chapter to a credit bureau, as defined by Section 392.001, Finance Code.

<< TX TRANSP § 707.004 >>

Sec. 707.004. REPORT OF ACCIDENTS. (a) In this section, "department" means the Texas Department of Transportation.

(b) Before installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall compile a written report of the number and type of traffic accidents that have occurred at the intersection for a period of at least 18 months before the date of the report.

(c) Not later than six months after the date of the installation of the photographic traffic signal enforcement system at the intersection, the local authority shall provide the department a copy of the report required by Subsection (b).

(d) After installing a photographic traffic signal enforcement system at an intersection approach, the local authority shall monitor and annually report to the department the number and type of traffic accidents at the intersection to determine whether the system results in a reduction in accidents or a reduction in the severity of accidents.

(e) The report must be in writing in the form prescribed by the department.

(f) Not later than December 1 of each year, the department shall publish the information submitted by a local authority under Subsection (d).

<< TX TRANSP § 707.005 >>

Sec. 707.005. MINIMUM CHANGE INTERVAL. At an intersection at which a photographic traffic monitoring system is in use, the minimum change interval for a steady yellow signal must be established in accordance with the Texas Manual on Uniform Traffic Control Devices.

<< TX TRANSP § 707.006 >>

Sec. 707.006. GENERAL SURVEILLANCE PROHIBITED; OFFENSE. (a) A local authority shall operate a photographic traffic control signal enforcement system only for the purpose of detecting a violation or suspected violation of a traffic-control signal.

(b) A person commits an offense if the person uses a photographic traffic signal enforcement system to produce a recorded image other than in the manner and for the purpose specified by this chapter.

(c) An offense under this section is a Class A misdemeanor.

<< TX TRANSP § 707.007 >>

Sec. 707.007. AMOUNT OF CIVIL PENALTY; LATE PAYMENT PENALTY. If a local authority enacts an ordinance to enforce compliance with the instructions of a traffic-control signal by the imposition of a civil or administrative penalty, the amount of:

(1) the civil or administrative penalty may not exceed $75; and

(2) a late payment penalty may not exceed $25.

<< TX TRANSP § 707.008 >>

Sec. 707.008. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES. (a) Not later than the 60th day after the end of a local authority's fiscal year, after deducting amounts the local authority is authorized by Subsection (b) to retain, the local authority shall:

(1) send 50 percent of the revenue derived from civil or administrative penalties collected by the local authority under this section to the comptroller for deposit to the credit of the regional trauma account established under Section 782.002, Health and Safety Code; and

(2) deposit the remainder of the revenue in a special account in the local authority's treasury that may be used only to fund traffic safety programs, including pedestrian safety programs, public safety programs, intersection improvements, and traffic enforcement.

(b) A local authority may retain an amount necessary to cover the costs of:

(1) purchasing or leasing equipment that is part of or used in connection with the photographic traffic signal enforcement system in the local authority;

(2) installing the photographic traffic signal enforcement system at sites in the local authority, including the costs of installing cameras, flashes, computer equipment, loop sensors, detectors, utility lines, data lines, poles and mounts, networking equipment, and associated labor costs;

(3) operating the photographic traffic signal enforcement system in the local authority, including the costs of creating, distributing, and delivering violation notices, review of violations conducted by employees of the local authority, the processing of fine payments and collections, and the costs associated with administrative adjudications and appeals; and

(4) maintaining the general upkeep and functioning of the photographic traffic signal enforcement system.

(c) Chapter 133, Local Government Code, applies to fee revenue described by Subsection (a)(1).

(d) If under Section 133.059, Local Government Code, the comptroller conducts an audit of a local authority and determines that the local authority retained more than the amounts authorized by this section or failed to deposit amounts as required by this section, the comptroller may impose a penalty on the local authority equal to twice the amount the local authority:

(1) retained in excess of the amount authorized by this section; or

(2) failed to deposit as required by this section.

<< TX TRANSP § 707.009 >>

Sec. 707.009. REQUIRED ORDINANCE PROVISIONS. An ordinance adopted under Section 707.002 must provide that a person against whom the local authority seeks to impose a civil penalty is entitled to a hearing and shall:

(1) provide for the period in which the hearing must be held;

(2) provide for the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents; and

(3) designate the department, agency, or office of the local authority responsible for the enforcement and administration of the ordinance or provide that the entity with which the local authority contracts under Section 707.003(a)(1) is responsible for the enforcement and administration of the ordinance.

<< TX TRANSP § 707.010 >>

Sec. 707.010. EFFECT ON OTHER ENFORCEMENT. (a) The implementation of a photographic traffic signal enforcement system by a local authority under this chapter does not:

(1) preclude the application or enforcement in the local authority of Section 544.007(d) in the manner prescribed by Chapter 543; or

(2) prohibit a peace officer from arresting a violator of Section 544.007(d) as provided by Chapter 543, if the peace officer personally witnesses the violation, or from issuing the violator a citation and notice to appear as provided by that chapter.

(b) A local authority may not impose a civil penalty under this chapter on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation of Section 544.007(d) recorded by the photographic traffic signal enforcement system.

<< TX TRANSP § 707.011 >>

Sec. 707.011. NOTICE OF VIOLATION; CONTENTS. (a) The imposition of a civil penalty under this chapter is initiated by the mailing of a notice of violation to the owner of the motor vehicle against whom the local authority seeks to impose the civil penalty.

(b) Not later than the 30th day after the date the violation is alleged to have occurred, the designated department, agency, or office of the local authority or the entity with which the local authority contracts under Section 707.003(a)(1) shall mail the notice of violation to the owner at:

(1) the owner's address as shown on the registration records of the Texas Department of Transportation; or

(2) if the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Texas Department of Transportation.

(c) The notice of violation must contain:

(1) a description of the violation alleged;

(2) the location of the intersection where the violation occurred;

(3) the date and time of the violation;

(4) the name and address of the owner of the vehicle involved in the violation;

(5) the registration number displayed on the license plate of the vehicle involved in the violation;

(6) a copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

(7) the amount of the civil penalty for which the owner is liable;

(8) the number of days the person has in which to pay or contest the imposition of the civil penalty and a statement that the person incurs a late payment penalty if the civil penalty is not paid or imposition of the penalty is not contested within that period;

(9) a statement that the owner of the vehicle in the notice of violation may elect to pay the civil penalty by mail sent to a specified address instead of appearing at the time and place of the administrative adjudication hearing; and

(10) information that informs the owner of the vehicle named in the notice of violation:

(A) of the owner's right to contest the imposition of the civil penalty against the person in an administrative adjudication hearing;

(B) that imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under Subdivision (8); and

(C) that failure to pay the civil penalty or to contest liability for the penalty in a timely manner is an admission of liability and a waiver of the owner's right to appeal the imposition of the civil penalty.

(d) A notice of violation is presumed to have been received on the fifth day after the date the notice is mailed.

<< TX TRANSP § 707.012 >>

Sec. 707.012. ADMISSION OF LIABILITY. A person who fails to pay the civil penalty or to contest liability for the penalty in a timely manner or who requests an administrative adjudication hearing to contest the imposition of the civil penalty against the person and fails to appear at that hearing is considered to:

(1) admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person; and

(2) waive the person's right to appeal the imposition of the civil penalty.

<< TX TRANSP § 707.013 >>

Sec. 707.013. PRESUMPTION. (a) It is presumed that the owner of the motor vehicle committed the violation alleged in the notice of violation mailed to the person if the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system belongs to the owner of the motor vehicle.

(b) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in a photograph or digital image taken by a photographic traffic signal enforcement system was owned by a person in the business of selling, renting, or leasing motor vehicles or by a person who was not the person named in the notice of violation, the presumption under Subsection (a) is rebutted on the presentation of evidence establishing that the vehicle was at that time:

(1) being test driven by another person;

(2) being rented or leased by the vehicle's owner to another person; or

(3) owned by a person who was not the person named in the notice of violation.

(c) Notwithstanding Section 707.014, the presentation of evidence under Subsection (b) by a person who is in the business of selling, renting, or leasing motor vehicles or did not own the vehicle at the time of the violation must be made by affidavit, through testimony at the administrative adjudication hearing under Section 707.014, or by a written declaration under penalty of perjury. The affidavit or written declaration may be submitted by mail to the local authority or the entity with which the local authority contracts under Section 707.003(a)(1).

(d) If the presumption established by Subsection (a) is rebutted under Subsection (b), a civil penalty may not be imposed on the owner of the vehicle or the person named in the notice of violation, as applicable.

(e) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted in the photograph or digital image taken by the photographic traffic signal enforcement system was owned by a person in the business of renting or leasing motor vehicles and the vehicle was being rented or leased to an individual, the owner of the motor vehicle shall provide to the local authority or the entity with which the local authority contracts under Section 707.003(a)(1) the name and address of the individual who was renting or leasing the motor vehicle depicted in the photograph or digital image and a statement of the period during which that individual was renting or leasing the vehicle. The owner shall provide the information required by this subsection not later than the 30th day after the date the notice of violation is received. If the owner provides the required information, it is presumed that the individual renting or leasing the motor vehicle committed the violation alleged in the notice of violation and the local authority or contractor may send a notice of violation to that individual at the address provided by the owner of the motor vehicle.

<< TX TRANSP § 707.014 >>

Sec. 707.014. ADMINISTRATIVE ADJUDICATION HEARING. (a) A person who receives a notice of violation under this chapter may contest the imposition of the civil penalty specified in the notice of violation by filing a written request for an administrative adjudication hearing. The request for a hearing must be filed on or before the date specified in the notice of violation, which may not be earlier than the 30th day after the date the notice of violation was mailed.

(b) On receipt of a timely request for an administrative adjudication hearing, the local authority shall notify the person of the date and time of the hearing.

(c) A hearing officer designated by the governing body of the local authority shall conduct the administrative adjudication hearing.

(d) In an administrative adjudication hearing, the issues must be proven by a preponderance of the evidence.

(e) The reliability of the photographic traffic signal enforcement system used to produce the recorded image of the motor vehicle involved in the violation may be attested to by affidavit of an officer or employee of the local authority or of the entity with which the local authority contracts under Section 707.003(a)(1) who is responsible for inspecting and maintaining the system.

(f) An affidavit of an officer or employee of the local authority or entity that alleges a violation based on an inspection of the applicable recorded image is:

(1) admissible in the administrative adjudication hearing and in an appeal under Section 707.016; and

(2) evidence of the facts contained in the affidavit.

(g) At the conclusion of the administrative adjudication hearing, the hearing officer shall enter a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A finding under this subsection must be in writing and be signed and dated by the hearing officer.

(h) A finding of liability for a civil penalty must specify the amount of the civil penalty for which the person is liable. If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(i) A finding of liability or a finding of no liability entered under this section may:

(1) be filed with the clerk or secretary of the local authority or with a person designated by the governing body of the local authority; and

(2) be recorded on microfilm or microfiche or using data processing techniques.

<< TX TRANSP § 707.015 >>

Sec. 707.015. UNTIMELY REQUEST FOR ADMINISTRATIVE ADJUDICATION HEARING. Notwithstanding any other provision of this chapter, a person who receives a notice of violation under this chapter and who fails to timely pay the amount of the civil penalty or fails to timely request an administrative adjudication hearing is entitled to an administrative adjudication hearing if:

(1) the person submits a written request for the hearing to the designated hearing officer, accompanied by an affidavit that attests to the date on which the person received the notice of violation; and

(2) the written request and affidavit are submitted to the hearing officer within the same number of days after the date the person received the notice of violation as specified under Section 707.011(c)(8).

<< TX TRANSP § 707.016 >>

Sec. 707.016. APPEAL. (a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty may appeal that determination to a judge by filing an appeal petition with the clerk of the court. The petition must be filed with:

(1) a justice court of the county in which the local authority is located; or

(2) if the local authority is a municipality, the municipal court of the municipality.

(b) The petition must be:

(1) filed before the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability for the civil penalty; and

(2) accompanied by payment of the costs required by law for the court.

(c) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the appropriate department, agency, or office of the local authority of the date, time, and place of the hearing.

(d) An appeal stays enforcement and collection of the civil penalty imposed against the owner of the motor vehicle. The owner shall file a notarized statement of personal financial obligation to perfect the owner's appeal.

(e) An appeal under this section shall be determined by the court by trial de novo.

<< TX TRANSP § 707.017 >>

Sec. 707.017. ENFORCEMENT. If the owner of a motor vehicle is delinquent in the payment of a civil penalty imposed under this chapter, the county assessor-collector or the Texas Department of Transportation may refuse to register a motor vehicle alleged to have been involved in the violation.

<< TX TRANSP § 707.018 >>

Sec. 707.018. IMPOSITION OF CIVIL PENALTY NOT A CONVICTION. The imposition of a civil penalty under this chapter is not a conviction and may not be considered a conviction for any purpose.

<< TX TRANSP § 707.019 >>

Sec. 707.019. FAILURE TO PAY CIVIL PENALTY. (a) If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed against the owner:

(1) an arrest warrant may not be issued for the owner; and

(2) the imposition of the civil penalty may not be recorded on the owner's driving record.

(b) Notice of Subsection (a) must be included in the notice of violation required by Section 707.011(c).

SECTION 2. Subsection (a), Section 27.031, Government Code, is amended to read as follows:

<< TX GOVT § 27.031 >>

(a) In addition to the jurisdiction and powers provided by the constitution and other law, the justice court has original jurisdiction of:

(1) civil matters in which exclusive jurisdiction is not in the district or county court and in which the amount in controversy is not more than $5,000, exclusive of interest;

(2) cases of forcible entry and detainer; ~~and~~

(3) foreclosure of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is otherwise within the justice court's jurisdiction; and

(4) cases arising under Chapter 707, Transportation Code, outside a municipality's territorial limits.

SECTION 3. Section 29.003, Government Code, is amended by adding Subsection (g) to read as follows:

<< TX GOVT § 29.003 >>

(g) A municipal court, including a municipal court of record, shall have exclusive appellate jurisdiction within the municipality's territorial limits in a case arising under Chapter 707, Transportation Code.

SECTION 4. Section 133.004, Local Government Code, is amended to read as follows:

<< TX LOCAL GOVT § 133.004 >>

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018;

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022; ~~and~~

(10) the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154; **and**

(11) the portion of the civil or administrative penalty described by Section 707.008(a)(1), Transportation Code, imposed by a local authority to enforce com-

pliance with the instructions of a traffic-control signal.

SECTION 5. Subtitle B, Title 9, Health and Safety Code, is amended by adding Chapter 782 to read as follows:

CHAPTER 782. REGIONAL EMERGENCY MEDICAL SERVICES

<< TX HEALTH & S § 782.001 >>

Sec. 782.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

<< TX HEALTH & S § 782.002 >>

Sec. 782.002. REGIONAL TRAUMA ACCOUNT. (a) The regional trauma account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to the commission to make distributions as provided by Section 782.003.

(b) The account is composed of money deposited to the credit of the account under Section 707.008, Transportation Code, and the earnings of the account.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the account.

<< TX HEALTH & S § 782.003 >>

Sec. 782.003. PAYMENTS FROM THE REGIONAL TRAUMA ACCOUNT. (a) The commissioner shall use money appropriated from the regional trauma account established under Section 782.002 to fund uncompensated care of designated trauma facilities and county and regional emergency medical services located in the area served by the trauma service area regional advisory council that serves the local authority submitting money under Section 707.008, Transportation Code.

(b) In any fiscal year, the commissioner shall use:

(1) 96 percent of the money appropriated from the account to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the Department of State Health Services;

(2) two percent of the money appropriated from the account for county and regional emergency medical services;

(3) one percent of the money appropriated from the account for distribution to the 22 trauma service area regional advisory councils; and

(4) one percent of the money appropriated from the account to fund administrative costs of the commission.

(c) The money under Subsection (b) shall be distributed in proportion to the amount deposited to the account from the local authority.

<< Note: TX TRANSP § 707.008 >>
<< Note: TX HEALTH & S § 782.002 >>
SECTION 6. Section 707.008, Transportation Code, as added by this Act, and Section 782.002, Health and Safety Code, as added by this Act, apply to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this Act, regardless of whether the penalty was imposed before, on, or after the effective date of this Act.

<< Note: TX HEALTH & S § 782.001 >>
SECTION 7. Not later than December 1, 2007, the executive commissioner of the Health and Human Services Commission shall adopt rules to implement Chapter 782, Health and Safety Code, as added by this Act.

<< Note: TX TRANSP § 707.004 >>
SECTION 8. The reporting and publication requirements imposed by Section 707.004, Transportation Code, as added by this Act, apply only to a year beginning on or after January 1, 2008.

<< Note: TX TRANSP § 707.003 >>
SECTION 9. Section 707.003, Transportation Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act.

SECTION 10. This Act takes effect September 1, 2007.

Passed the Senate on April 3, 2007: Yeas 28, Nays 2; May 24, 2007, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 2007, House granted request of the Senate; May 27, 2007, Senate adopted Conference Committee Report by the following vote: Yeas 28, Nays 2; passed the House, with amendments, on May 16, 2007: Yeas 136, Nays 12, two present not voting; May 26, 2007, House granted request of the Senate for appointment of Conference Committee; May 27, 2007, House adopted Conference Committee Report by the following vote: Yeas 125, Nays 18, two present not voting.

Approved June 15, 2007.

Effective September 1, 2007.

TX LEGIS 1149 (2007)

END OF DOCUMENT

TAB 10

CHAPTER 392. DEBT COLLECTION

SUBCHAPTER A. GENERAL PROVISIONS

Section

SUBCHAPTER B. SURETY BOND

SUBCHAPTER C. INFORMATION IN FILES OF CREDIT BUREAU OR DEBT COLLECTOR

SUBCHAPTER D. PROHIBITED DEBT COLLECTION METHODS

SUBCHAPTER E. DEFENSE, CRIMINAL PENALTY, AND CIVIL REMEDIES

Law Review and Journal Commentaries

Coercive collection and exempt property in Texas. Roy Ryden Anderson, 13 Hous.L.Rev. 84 (1975).

Procedural due process. 10 Hous.L.Rev. 880 (1973).

Texas Debt Collection Practices Act: Relief for harassed debtor? William R. Crow, Jr., 8 St.Mary's L.J. 773 (1977).

Usury implications of front-end interest in advance. 29 Sw.L.J. 748 (1975).

United States Code Annotated

Debt collection practices, see 15 U.S.C.A. § 1692 et seq.

SUBCHAPTER A. GENERAL PROVISIONS

§ 392.001. Definitions

In this chapter:

(1) "Consumer" means an individual who has a consumer debt.

(2) "Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.

(3) "Creditor" means a party, other than a consumer, to a transaction or alleged transaction involving one or more consumers.

(4) "Credit bureau" means a person who, for compensation, gathers, records, and disseminates information relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, a person for the purpose of furnishing that information to another person.

(5) "Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.

(6) "Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.

(7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

(A) are regularly engaged to solicit debts for collection; or

(B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

Acts 1997, 75th Leg., ch. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, § 7.42, eff. Sept. 1, 1999.

Revisor's Note

(1) The revised law omits the definition of "consumer transaction" contained in V.A.C.S. Article 5069–11.01(e) because the substance of that term is included in the definition of "consumer debt."

(2) The revised law omits the definition of "person" contained in V.A.C.S. Article 5069–11.01(g) because it is substantively identical to the definition provided by Section 311.005(2), Government Code (Code Construction Act), applicable to the revised law. The omitted law reads:

(g) "Person" means individual, corporation, trust, partnership, incorporated or unincorporated association, or any other legal entity.

Historical and Statutory Notes

Acts 1999, 76th Leg., ch. 62, to more accurately reflect the source law from which this section was derived, in subd. (7), in the introductory language, substituted "does not include" for "includes", and "unless" for "if".

Prior Laws:
Acts 1973, 63rd Leg., p. 1513, ch. 547, § 1.
Acts 1993, 73rd Leg., ch. 788, § 1.
Acts 1993, 73rd Leg., ch. 813, § 1.
Vernon's Ann.Civ.St. arts. 5069–11.01(a) to (f), (h); 5069–11.07A(i), (j).